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ABSTRACT

The Gay, Lesbian, and Straight Education Network (GLSEN) aims to unite with educators in cultivating an informed citizenry and future generations of children who respect and accept all people, regardless of their sexual orientation or gender identity. By supporting educators in their efforts to build schools where information and expression flow freely, GLSEN hopes to advance democratic values in classrooms across the nation. This guide provides a means for educators and parents to address questions about civil rights and sexual identity, in an open and direct way. As legislative hearings take place to determine the fate of marriage in states around the country, students will need guidance in order to integrate this complex information and to form their own opinions. This curriculum guide will help students explore the complex issues reflected in the debate on same-sex marriages. Following the lesson plans, readings are included to provide students with a fuller understanding of the many facets involved in the marriage debate. These articles include topics on: (1) meaning and purpose of marriage; (2) rights of civil marriage; (3) historical context and parallels; (4) spiritual unions; (5) influence on youth; and (6) recent decisions in Vermont and California. Also included are Appendix One, "Universal Declaration of Human Rights," and Appendix Two, "The Struggle To Legalize Same-Sex Relationships in the U.S., a Brief Timeline." (Contains 19 resources.) (Author/JDM)

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ED 441 204

AT ISSUE:
MARRIAGE

Exploring the Debate Over Marriage Rights for Same-Sex Couples

A CURRICULUM GUIDE FOR HIGH SCHOOL EDUCATORS

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A Publication of the Gay, Lesbian and Straight Education Network (GLSEN)

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ACKNOWLEDGMENTS

At Issue: Marriage, Exploring the Debate Over Marriage Rights for Same-Sex Couples is a publication of the Gay, Lesbian and Straight Education Network (GLSEN). GLSEN is the largest national organization that brings together lesbian, gay, bisexual, transgender (LGBT) and straight concerned citizens from all walks of life in order to end the destructive effects of anti-gay bias in schools across the country. GLSEN strives to assure that each member of every school community is valued and respected regardless of sexual orientation and gender identity. GLSEN welcomes as members any and all individuals, regardless of sexual orientation, who share this philosophy.

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ABOUT THE *AT ISSUE* GUIDES

GLSEN's *At Issue* curriculum guides present educators with resources and strategies for integrating timely lesbian, gay, bisexual, transgender (LGBT), and other diversity issues into classroom curricula. The series, initiated in Spring 2000, reflects GLSEN's conviction that a solid education includes opportunities to discuss matters – even those most controversial – that impact society in substantial ways. Though there are developmentally appropriate and responsible methods for approaching most class investigations, there is no age group too young to learn about issues of human equality, including the equality of LGBT people. Despite the attempts of some legislators and administrators to keep issues of significance to the LGBT communities out of the classroom, GLSEN believes that most educators and family members recognize the importance of an honest and accurate exchange of information, especially when that exchange concerns the individual freedom of any group of people.

Though the *At Issue* guides challenge students to examine multiple perspectives, they are not offered as impartial or all-encompassing resources. GLSEN materials are not value-free – indeed they stem from our organizational mission, which asserts our belief in the need for LGBT human and civil rights. GLSEN intends to present a particular point of view through its materials, and regards its resources as one of a variety of tools upon which educators might draw in covering issues comprehensively.

Nevertheless, in an effort to present materials that are of practical use to educators, our *At Issue* guides will present some viewpoints that may not agree with our own. It is our belief that, by representing responsible dissenting opinions, we exemplify the change we wish to see in the world. Given that we wish students to have free access to a wide range of credible information, we will mirror that range in our own guides.

At Issue: Marriage, Exploring the Debate Over Marriage Rights for Same-Sex Couples is the first of GLSEN's *At Issue* guides, a periodic resource exploring themes critical to the struggle for LGBT rights. GLSEN plans to release its second edition in Fall 2000, which will examine some of the diversity questions at issue in the upcoming presidential election. GLSEN welcomes your feedback on this guide as well as suggestions for future guides. If you would like to comment, share effective lessons/strategies, communicate your needs, and/or receive information about future GLSEN resources, please contact us at:

Education Department
GLSEN
121 West 27th Street, Suite 804
New York, NY 10001
tel: (212) 727-0135; fax: (212) 727-0254
glsen@glsen.org
www.glsen.org

ABOUT THIS GUIDE

"When educators subject students to politicized lessons about homosexuality, they infringe upon the rights of parents to provide moral instruction to their children. I pledge, therefore, to oppose the promotion of homosexuality as normative in America's public schools, recognizing that this issue is best discussed at home."

It was a dispiriting moment when Iowa's largest newspaper, the *Des Moines Register*, printed this statement as part of a full-page ad calling upon all Presidential candidates to pledge their opposition to lesbian, gay, bisexual, and transgender (LGBT) equality. *For the Importance of Marriage and Family, A Presidential Candidate Pledge* was signed by six of the then nine Republican candidates – Gary Bauer, Pat Buchanan, Steve Forbes, Senator Orrin Hatch, Alan Keyes, and Dan Quayle.

Though the pledge reflects a decidedly anti-gay stance on a wide range of LGBT civil rights issues, the real danger exists in its underlying affront to democracy. No matter where one stands on the issues at hand, the legislation of silence can be understood as nothing less than despotic. Prohibiting the discussion of controversial ideas in important public forums strips Americans of the opportunities to access diverse information, express themselves freely, and fully engage in the development of both personal and community values. Framing the issue with loaded and manipulative terms such as *politicized*, *promotion*, and *normative* further undermines the democratic process by using fear tactics to discourage politicians, parents, and educators from addressing tough questions openly and directly – the true mark of a free society.

It is for these reasons that the Gay, Lesbian and Straight Education Network (GLSEN) has decided to introduce this series of *At Issue* curriculum guides. *At Issue: Marriage, Exploring the Debate Over Marriage Rights for Same-Sex Couples* is the first of the series. The debate about marriage of same-sex couples was thrust into the national spotlight in 1993 when three same-sex couples sued the state of Hawaii for the right to marry. The issue was the subject of heightened public attention again in 1999 as the Hawaii Supreme Court declared the case moot after a state constitutional amendment reserving marriage for different-sex couples only. In 1999, Americans also wrestled with the Limit on Marriages Ballot Initiative Measure in California, which asserts that only marriage between a man and a woman is legally valid and recognized. In the same year, Vermont became the first U.S. state to rule that the benefits and protections of marriage be conferred on same-sex couples. 1999 was also the year in which these words appeared in the *Presidential Candidate Pledge* cited above:

"If elected President...I will uphold the sacred institution of marriage as the lifelong union of one man and one woman [and] vigilantly defend this age-old institution against any effort – judicial or legislative – to redefine it to include same-sex relationships. Furthermore...I will resist all attempts to provide the benefits and privileges traditionally accorded married couples to unmarried 'domestic partners' – as such efforts diminish the unique role of marriage as the bedrock of family and society."

As legislative hearings take place to determine the fate of marriage in Vermont and Presidential candidates debate the future of the institution, students will need guidance in order to integrate this complex information and develop a personal stance on a matter of such national consequence. Along with parents and care takers, schools must take a leading role in providing accurate information about same-sex relationships and creating safe spaces in which students can make sense of the various points of view they hear from family, peers, community leaders, and mass media.

Toward this end, *At Issue: Marriage, Exploring the Debate Over Marriage Rights for Same-Sex Couples* offers educators six lesson plans for high school aged students with accompanying resources and a compendium of articles written by social commentators and experts in the field representing organizations including:

- Gay & Lesbian Advocates & Defenders
- Lambda Legal Defense and Education Fund
- Lincoln School (Providence, RI)
- Metropolitan Community Church
- National Conference of Catholic Bishops
- Prison Fellowship Ministries
- *Time Magazine*
- *US News and World Report*

The curriculum unit challenges students to explore the range of complex issues reflected in the marriage debate, such as:

- The meaning and purpose of marriage
- The rights of civil marriage
- Historical context and parallels
- Spiritual unions
- Influences on youth
- The recent decisions in Vermont and California

By providing students with an in-depth and multifaceted investigation of marriage, GLSEN hopes to unite with educators in cultivating an informed citizenry and future generation of children who respect and accept all people, regardless of sexual orientation or gender identity. By supporting educators in their efforts to build schools in which information and expression flow freely, GLSEN hopes to advance the spirit of democracy in classrooms across the nation.

DISCUSSING MARRIAGE OF SAME-SEX COUPLES WITH STUDENTS

As the issue of marriage of same-sex couples makes its way into the national spotlight, students will surely bring their feelings and questions about this subject into the classroom, presenting educators with an opportunity to deepen students' thinking about matters that are of great legal, economic, social and moral importance. Students will benefit from an accurate presentation of the facts and the opportunity to discuss important issues in a safe space.

Since students are routinely bombarded with all sorts of information from television, the Internet, peers, and community leaders, it is an outdated and false notion that keeping controversial issues out of the classroom will somehow protect and preserve students' "innocence." On the contrary, students are harmed more when they have no place in which to make sense of complex issues, work past stereotypes and misconceptions, and to develop a strong sense of personal ethics and morals.

It is therefore both appropriate and important that issues such as marriage of same-sex couples be discussed and debated in class. As you discuss the issues with your students, bear in mind the following ideas:

Many students have had experiences with same-sex couples: Don't assume that your students have no experience or knowledge about same-sex relationships. Growing numbers of children today are being raised in same-sex headed families. Many others have friends, neighbors, and relatives that are in committed, same-sex relationships. Draw upon your students' experiences to enrich the conversation and try to acknowledge the many different family constellations from which they likely come. Discussions based on personal understandings will have more meaning for students than those that are abstract or removed from the real lives of community members.

Same-sex families already exist: Unions of same-sex couples have existed around the world for thousands of years. Despite social and legal obstacles, same-sex partners have always found ways to demonstrate their love and commitment for one another, and to create a sense of family for themselves. It is important for students to understand that – legally sanctioned or not – marriages of same-sex couples already exist. Legislation preventing or blocking recognition of these marriages would not change this fact, but would deprive millions of existent families of the legal and economic benefits that many of their heterosexual counterparts enjoy.

There is no evidence to support the notion that marriage of same-sex couples would pose a threat to the institution of marriage or to the fabric of society in general: Some opponents of marriage that is inclusive of same-sex couples feel that legally permitting such unions will somehow diminish the institution of marriage and contribute to a moral decay within society. There is little objective evidence to support these claims, however. Studies of same-sex partnerships indicate that these relationships function similarly to those of opposite-sex couples in terms of commitment, endurance, and mutual care and support. Findings also support the conclusion that the great majority of same-sex couples share the kind of intimacy and economic sharing that marriage laws seek to encourage. Concerns about the integrity of the institution of marriage and societal decay are therefore unfounded. Such fears have been historically expressed when changes to the rules of marriage have been considered. When interracial marriage bans were lifted, many asserted that this would lead to polygamous coupling and incestuous relations. When England was considering allowing wives to own property, the *London Times* declared that doing so would "abolish families in the old sense" and "break up society into men and women" creating "discomfort, ill-feeling and distrust where hitherto harmony and concord prevailed." These foretellings of societal disaster proved foolish. Indeed, if one looks to the many countries that have given formal status to unions of same-sex couples today, there is no evidence of negative societal consequences.

The emotional health of children reared in same-sex headed families does not differ from that of other children: Though many married couples cannot or choose not to have children, for young students, notions of marriage and parenting are inseparably intertwined. Students may therefore question the ability of same-sex partners to be good parents. It is important to stress that the best parents are those who provide love, support, and a caring home for their children. Sexual orientation and gender identity should be de-emphasized as criteria for evaluating child-rearing ability in favor of these more enduring characteristics of good parenting. There is no existing research to support the claim that same-sex parents rear children with greater emotional or identity conflicts than heterosexual parents. The American Psychological Association concluded, in fact, that "not a single study has found children of gay and lesbian parents to be disadvantaged in any significant respect relative to the children of heterosexual parents. Indeed the evidence suggests that home environments provided by gay and lesbian parents are as likely as those provided by heterosexual parents to support and enable children's psychological growth." This is not to say that being raised by same-sex parents comes without difficulties; children will inevitably have to cope with teasing, feelings of embarrassment, and other realities as a result of the negative social stigma attached to homosexuality. Studies show, however, that despite these special problems, the mental health of children reared in same-sex headed families does not differ from that of other children. These children learn to deal with community stigma based on their families' difference just as children living in other minority families. Relying on community stigma as a basis for regulating marriage is problematic, and such arguments have been rejected by the courts in cases claiming that social stigma resulting from interracial marriages would be detrimental to children.

Marriage is a basic human right: When discussing this issue, help students to move past preoccupations with the "rightness" or "wrongness" of same-sex coupling or homosexuality in general. Place the debate over marriage within the context of human rights, thereby expanding the dialogue beyond the realm of

DISCUSSING MARRIAGE OF SAME-SEX COUPLES WITH STUDENTS (CONTINUED)

morality. The core concern of students – and all citizens – should transcend their moral stance and be an objective consideration of the justness of a government that denies social, legal and economic benefits and protections to one segment of the population while affording them to all others. Marriage should be understood as a basic human right and an individual personal choice. The Universal Declaration of Human Rights, ratified by the United Nations in 1948 and considered the standard for human rights practices internationally, declares marriage and family a fundamental human right, stating that "the family is the natural and fundamental group unit of society and is entitled to protection by society and the state."

This is not just a "gay" issue: Marriage of same-sex couples is an issue about which many citizens – both gay and straight – are concerned. Non-gay people are affected, among other ways, by attempts to use anti-marriage laws to strip away domestic partnership laws and protections. Laws that are discriminatory and unjust pave the way for future limits to our freedom, and this affects us all. Students should be encouraged to take an interest in matters that may not affect them directly, but threaten the integrity of other individuals and our society in general. It may interest them to know that Coretta Scott King and many other community leaders have expressed their support for the right of same-sex couples to marry.

Students may be directly impacted: Marriage legislation affects not only the couples, but the families that they support as well. By denying same-sex couples the right to marry, the government may also be denying students eligibility for financial aid and scholarships, which is often affected by marital status. Committed, same-sex couples still in school may also be denied student housing and the ability to move easily from state to state for study and work.

This is not the first instance of government interference with people's freedom to marry: Less than 30 years ago, interracial couples were prohibited from legally marrying. Today, very similar discriminatory arguments are being used to prohibit same-sex couples from marrying. A Virginia judge ruled in 1958 that "Almighty God created the races...and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for [interracial] marriages. The fact that he separated the races shows that he did not intend for the races to mix." Americans today recognize the inherent prejudice in this statement, and the right of each individual to marry the person she or he loves, regardless of race, class, religion and the like. Examined against the backdrop of interracial marriage bans, it becomes difficult to make a rational case for marriage prohibitions against same-sex couples. Students should understand both the historical parallels to marriage prohibitions against same-sex couples as well as the similarities among racism, homophobia, and all other oppressions.

LESSON 1

WHAT IS MARRIAGE FOR?

In her book *What is Marriage For?* E.J. Graff describes marriage as "a kind of Jerusalem, an archaeological site on which the present is constantly building over the past, letting history's many layers twist and tilt into today's walls and floors." Indeed the institution of marriage has changed dramatically over the centuries to reflect evolving understandings of family, money, sex, love, and power. In this lesson, students are challenged to discern some of those understandings from specific laws and customs of different eras. Students are then asked to examine current practices and to determine the extent to which they reflect modern understandings of marriage.

OBJECTIVES:
- To investigate historical beliefs and practices with regard to marriage.
- To explore modern marriage customs and laws, and the belief system inherent in them.
- To examine attitudes toward marriage of same-sex couples against current beliefs about the purpose of marriage.
- To develop a personal definition of marriage (both what it is and why we do it).

AGE LEVEL: High School

TIME: 75-90 Minutes (If only one period is available, leave out Parts 1 and 4)

MATERIALS: Handouts #1 and #2: *Evolving Understandings of Marriage*; chart paper and markers

BACKGROUND READING: *What is Marriage For?* By E.J. Graff; *When John and Jim Say 'I Do'* by Charles Krauthammer

SUBJECT AREAS: Social Studies (History, Law)

PART 1: DEFINING MARRIAGE AND ITS PURPOSE (20-30 MINUTES)

In advance of the lesson, give students the following homework: Ask each student to poll at least 3 people, and to write down their responses to these questions:

- What is marriage?
- Why do people marry?

In class, divide students into groups of 3 or 4 to share the ideas they gathered. Though the questions may initially seem simple and straightforward, they are deceptively complex and will likely elicit a broad range of responses. After about 10 minutes of discussion, ask each group to write a definition of marriage that reflects their beliefs about the purposes and meanings of the institution. As each group finishes, ask them to post their definition on the wall. Invite all students to take a "gallery walk" to survey the statements with which each group came up. If time permits, allow students to respond to one another's definitions, and to further explore the meaning of marriage.

PART 2: EVOLVING UNDERSTANDINGS OF MARRIAGE (20 MINUTES)

For the moment, set aside the student definitions of marriage. Explain that thoughts about marriage have changed dramatically over the centuries as people's ideas about love and sex, money and power have developed. Examining past marriage practices and laws can provide us with some interesting insights into evolving understandings of the purposes of marriage. Divide the class into groups of 4 or 5. Give each group a copy of Handout #1: *Evolving Understandings of Marriage* and the accompanying chart. Assign each group 1 or 2 of the items on the sheet. (Alternatively, cut the sheet into strips and hand 1 or 2 strips out to each group). Inform the students that the sheet (or strips) describes marriage laws or customs from a variety of cultures and eras. Inherent in each law or custom is a set of attitudes or beliefs about the purpose of marriage in that time and place. Challenge students to list as many attitudes as they can discern from the stated law/custom. For example, dowry requirements presume an understanding of marriage as an economic venture. Prohibitions of contraception and abortion point to understandings of marriage primarily as a vehicle for procreation. And interracial marriage bans support the idea that marriage is a way to increase one's race and keep it pure. When students have finished, allow time for them to display and share their ideas with the class.

PART 3: MODERN UNDERSTANDINGS OF MARRIAGE (20 MINUTES)

Ask students to point out some of the ways in which modern understandings of marriage differ from those listed on the sheet/strips. Elicit laws or customs that students feel are reflective of current marriage practice and, as above, the underlying attitudes/beliefs. List each on the board. For example, they may point out that many couples choose to live together prior to getting married, that married couples file tax returns jointly, or that some

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WHAT IS MARRIAGE FOR? (CONTINUED)

couples choose not to have children. These practices reflect the ideas that marriage requires compatibility, economic interdependence, and that marriage is first and foremost about love – not procreation. If no student brings it up, list the fact that marriage is legally defined as the union between a man and a woman, that marriage of same-sex couples is not legally recognized in any of the 50 states. Ask students to consider whether this law is consistent with the attitudes/beliefs about marriage that they have listed. If marriage is primarily a reflection of love, spiritual devotion, economic commitment, etc., is it justifiable to exclude individuals from the institution based upon sex/sexual orientation? Just as we have changed marriage law to incorporate modern ideas about birth control, gender equality, and divorce, is it time again to amend the institution to protect the rights of sexual/gender minorities?

PART 4: REVISITING OUR DEFINITIONS (15-20 MINUTES)

After students have had ample time for discussion, ask them to revisit the definitions of marriage that they wrote in Part 1. In their original small groups, ask them to consider whether or not their ideas about the meaning and purposes of marriage have shifted as a result of the class discussion. Give each group the option of revising their original definitions to incorporate new understandings. Re-post and share these statements before concluding the lesson.

HANDOUT

1

EVOLVING UNDERSTANDINGS OF MARRIAGE

1. In many societies, members were forbidden to marry outside the tribe, clan, culture, or religion while marriage within the family was considered acceptable. The ancient Hebrews, for example, enforced strict rules against marrying foreigners, but had only the barest of rules against marrying within the family. The Romans allowed first cousins to marry, and early Germanic clans gave the nod to uncle/niece marriages.

2. For centuries, and in many different parts of the world, marriage could not take place without a *dowry* – the money, goods, or estate that a woman brought to her husband in marriage, or a gift of money or property by a man to or for his bride. In 1425, the city of Florence, Italy even launched a savings-bond institution in which a family could invest for a daughter's future dowry with returns of up to 15.5% compounded annually, with both capital and interest paid to the husband after consummation.

3. For centuries, the most enduring slave systems – including the Greeks, Romans, Hebrews, medieval Germans, and Americans – denied legal recognition to slave marriages.

4. In many cultures, *polygamy* (marriage in which a spouse of either sex may have more than one mate at the same time) has been commonly practiced for centuries. At one time, Jewish law required a man whose first wife did not bear a child within ten years to marry another – with or without divorcing the first. In many African and Middle Eastern cultures, polygamy is still practiced today.

5. In the 1700s and 1800s, many laws extended the biblical idea that a husband and wife become "one flesh." In British law, a 1765 statement by Lord Blackstone read, "In law husband and wife are one person, and the husband is that person." This meant that a wife could own no personal property, make no personal contracts, and bring no lawsuits. The husband took over her legal identity – a concept called "coverture," because his identity "covered" hers.

6. Before the 20th century, *contraception* (deliberate prevention of conception or impregnation) was widely viewed as immoral within the institution of marriage (especially in the West and among Christians). The 1876 book *Conjugal Sins* insisted that contraceptive attempts "degrade to bestiality the true feelings of manhood and the holy state of matrimony." During a period of escalated anti-contraception feelings and backlash laws in the 19th century, more than half of the states in the U.S. enacted laws that criminalized and prevented any sex acts that "made love without making babies."

7. In 1850, Indiana's State Legislature passed the most open divorce law the United States had ever known. It stated that judges could grant divorce for any reason at all – not just under conditions of adultery, attempted murder, or other extreme circumstances. Though scandalous at the time, divorce has become a common and acceptable practice within mainstream American society.

8. In 1948, the California Supreme Court led the way in challenging racial discrimination in marriage and became the first state high court to declare unconstitutional an anti-miscegenation law (*miscegenation* means a mixture of races, especially marriage or cohabitation between a white person and a member of another race). In 1967, the United States Supreme Court struck down the remaining interracial marriage laws across the country, and declared that the "freedom to marry" belongs to all Americans.

9. In 1976, the West German Civil Code was revised to eliminate traditional matrimonial phrases requiring "husbands to support wives" and "wives to obey husbands." It now reads "The spouses are mutually obliged to adequately maintain the family by their work and property..."

10. In 1987 the U.S. Supreme Court struck down a Missouri prison's refusal to allow its inmates – convicted felons, people who couldn't vote much less support their wives or future children – to marry, since "inmate marriages, like others, are expressions of emotional support and public commitment...having spiritual significance."

Excerpted in part from *What Is Marriage For? The Strange Social History of Our Most Intimate Institution* (Beacon Press) ©E. J. Graff 1999

HANDOUT

2

EVOLVING UNDERSTANDINGS OF MARRIAGE

Handout #1 describes marriage laws and customs from a variety of cultures and eras. Inherent in each law or custom is a set of attitudes or beliefs about the purposes of marriage in that time and place. For each law/custom, list as many underlying beliefs as you can identify.

EXAMPLE:

Law/Custom: The German guilds didn't allow a man to become a master and run his own business unless he had a wife.

Underlying Attitudes/ Beliefs:
Marriage was a way to acquire a business partner.
Marriage was a complete plan of labor.
All men were expected to marry.

Law/Custom #____

Underlying Attitudes/Beliefs:

Law/Custom #____

UNDERLYING ATTITUDES/BELIEFS:

LESSON 2

THE RIGHTS OF CIVIL MARRIAGE

There are literally hundreds of rights, benefits, and protections that accompany civil marriage in the United States. Because they are so automatic, many people take these rights for granted. For same-sex couples, however – who are prohibited from civil marriage – the absence of these rights often creates devastating problems. In this lesson students will explore some of the rights associated with civil marriage, as well as some situations in which same-sex couples find themselves when denied these rights.

OBJECTIVES:
- To differentiate personal from legal definitions of marriage.
- To identify some of the rights which accompany civil marriage.
- To explore some of the problems faced by same-sex couples that are denied the rights of civil marriage.

AGE LEVEL: High School

TIME: 40-60 Minutes

MATERIALS: Handout #3: *Civil Marriage Rights*; Handout #4: *Legal/Economic Protections*; Handout #5: *Civil Marriage Rights: Scenarios*; chart paper and markers

BACKGROUND READING: *Why Civil Marriage Laws Should Not Discriminate Against Lesbians and Gay Men* by Mary L. Bonauto and Evan Wolfson; *Brave New Marriage: Nothing But a Contract?* By Chuck Colson

SUBJECT AREA: Social Studies (Politics/Government, Law)

PART 1: IDENTIFYING THE RIGHTS OF CIVIL MARRIAGE (20-30 MINUTES)

If students have completed Lesson 1, ask them to briefly reiterate some of the definitions of marriage at which they arrived. If not, ask students what they think marriage is. List some of their definitions on the board. Point out that while we may all have our own personal understandings of marriage, there are legal definitions as well which may or may not intersect with closely held meanings. Define *civil marriage* as a state recognized contract between one man and one woman that reflects very specific rights, benefits, and protections. Inform students that 1,049 federal laws have been identified in which benefits, rights, and privileges are contingent upon marital status. These rights are so automatic in our society that they are often taken for granted. Divide students into groups of 4 and distribute Handout #3: *Civil Marriage Rights*. Challenge each group to brainstorm as many rights as they can. Post and share each list. Ask students whether or not they feel that those couples that choose not to marry or are not legally entitled to marry are at a disadvantage. Ask them whether or not they think couples who cannot marry are victims of discrimination. Distribute Handout #4: *Legal/Economic Protections* so that students may review a partial list of the rights afforded to married couples, but unavailable to those who are barred from legal marriage.

PART 2: SAME-SEX COUPLES: SCENARIOS (20-30 MINUTES)

Inform the students that no country in the world yet allows same-sex couples the freedom to marry, and none provides gay and lesbian people the full range of protections, responsibilities, and benefits that come with civil marriage. (Some countries have set up partnership registries that offer partial benefits and, in the U.S., the state of Vermont recently ruled that the benefits and protections of marriage must be extended to same-sex couples – if not through marriage then through a separate, but equal system). The lack of access to marriage rights is problematic for many same-sex couples, who are often faced with insurmountable problems in remaining together and caring for one another. Divide the students into groups of 3-5 and distribute Handout #5: *Civil Marriage Rights: Scenarios*. Explain that these scenarios are fictionalized accounts of real situations with which many same-sex couples are faced. Assign a scenario to each group and ask them to assume the role of a judge or other decision-making authority. As they read and discuss the scenarios, ask groups to determine what rights should/should not be afforded to same-sex couples and why. Ask them to consider whether or not they feel that current prohibitions of marriage of same-sex couples are discriminatory, and what, if anything, government should do in response. If time remains, have each group share its thoughts.

HANDOUT

3

CIVIL MARRIAGE RIGHTS

Civil marriage is a state sanctioned contract between one man and one woman that reflects very specific rights, benefits, and protections. 1,049 federal laws have been identified in which benefits, rights, and privileges are contingent on marital status. These rights are so automatic in our society that many people take them for granted. Below list as many of the rights as you can brainstorm that accompany civil marriage.

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

9. _____

10. _____

11. _____

12. _____

13. _____

14. _____

15. _____

16. _____

17. _____

18. _____

HANDOUT

4

MARRIAGE PROJECT FACT SHEET: LEGAL/ECONOMIC PROTECTIONS

Although many same-sex couples are in long-term relationships, and undertake responsibilities toward one another just as married couples do, they are denied the vast array of legal, economic, and practical protections that married couples enjoy. Among these are the rights to:

Government Benefits

- share such government benefits as Social Security and Medicare;
- file joint tax returns and get special marriage or family rates or exemptions;
- obtain veterans' discounts on medical care, education, and housing loans;
- apply for immigration and residency for partners from other countries;

Family Recognition

- have joint parenting, adoption, foster care, custody, and visitation;
- enter jointly into rental leases with automatic renewal rights;
- obtain domestic violence protection orders;
- secure equitable division of property and determine child custody and support in case of divorce;

Health Care

- take bereavement or sick leave to care for partner or child;
- visit a partner or child in the hospital, and other public institutions;
- obtain joint insurance policies for home and auto, as well as family health coverage;
- make medical decisions on a partner's behalf in the event of illness;

Life Planning

- inherit automatically in the absence of a will;
- choose a final resting place for a deceased partner;
- receive spousal exemptions to property tax increases upon the death of a partner;
- obtain wrongful death benefits for a surviving partner and children;

In total, there are *hundreds* of legal rights and responsibilities that come with civil marriage. Most of these protections cannot be privately arranged or contracted through other means, even for those who can afford a lawyer. Furthermore, private employers, banks, and other businesses often extend important benefits and privileges – such as special rates or memberships – to married couples only.

Gay people are moved by the same mix of personal, economic, and practical reasons as non-gay people, who take for granted the right to choose whether and whom to marry. Denying equal marriage rights not only deprives same-sex couples of the social and emotional significance that marriage holds for many, it also deprives them of essential legal and economic protections.

From Lambda Legal Defense and Education Fund, www.lambdalegal.org

HANDOUT

5

CIVIL MARRIAGE RIGHTS: SCENARIOS

The scenarios below are fictionalized accounts of real situations in which same-sex couples have been denied spousal rights because their relationships are not recognized as legal marriages by the state. For each scenario, imagine that you are the judge or other authority hearing the case. What would your decision be? In what cases do you feel same-sex couples deserve equal marriage rights? Are there situations in which they do not?

1. Michael and Rolando have been sharing a home and a life together for the past three years. They first met in graduate school after Rolando left his native Peru to study economics in Boston. It wasn't long before they fell in love and moved in together. Upon graduating school, Rolando's student visa expired and he was notified that he must return to Peru. Michael attempted to sponsor his partner, but was denied because the two were not legally married. Rolando has tried to extend his visa, but has been repeatedly rejected. The couple has considered applying for residency in Canada in order to stay together, but is distraught about leaving their friends and family in Boston. Unless immigration authorities hear their appeal, deportation is imminent for Rolando. Imagine you are an immigration official. Though current law would constrain your decision, what factors would you consider in deciding the fate of this couple?

2. Asha and Tracy lived together for over 15 years, sharing the responsibilities of maintaining their home and raising their son, Tim – now 10. Asha became pregnant with Tim after the couple agreed that they wanted to start a family. Since Tracy and Asha are both working moms, the two have shared child-rearing responsibilities equally, and both feel strong maternal bonds to their son. During the last few years of their relationship, Tracy and Asha grew apart and began fighting frequently. After several rounds of couple counseling and many attempts to stay together for Tim's sake, Asha and Tracy decided it would be best for everyone if they separated. Since they could not agree on a custody arrangement, a court battle ensued. Because Asha is the biological parent, the judge ruled that she would receive full custody of Tim. The court granted no visitation rights to Tracy, despite the fact that she co-raised Tim from birth and Tim's testimony that he loves both of his moms the same. Tracy was devastated by the court's decision and her lawyers are preparing an appeal. Imagine you are the judge hearing the appeal. What is your decision?

HANDOUT

5

CIVIL MARRIAGE RIGHTS: SCENARIOS (CONTINUED)

3. Sean moved from the small town in which he grew up to New York City so that he could live more openly as a gay man. Since his family was not accepting of his sexual orientation, Sean arrived in New York with no family ties or support network. He eventually met and fell in love with Marc, whose family and friends embraced the couple. After many years together, Sean found out that he had a form of non-operable cancer. As Sean's health deteriorated, Marc assumed full responsibility for his care, and even took a leave from his job so that he could attend to Sean's needs around the clock. When Sean died a year later, his estranged family arranged for the funeral to take place in their hometown, and told Marc that he was not welcome to attend. Because Sean and Marc did not have status as a married couple, Marc had no legal right to make burial decisions or to inherit any of Sean's property. To make matters worse, Marc was evicted from his apartment. Since the lease had been in Sean's name and there was no legal marriage, Marc had no rights to the apartment. Marc is currently exploring legal avenues in order to both keep his home and honor the burial wishes of Sean. Imagine you are the trial judge. What is your decision?

4. Marta had been living with Sue – whom she considered her wife – for two years when she decided it was time to be honest with her family. When Marta told her parents that she is a lesbian, they told her that they would never understand or accept her "lifestyle." Marta quickly became estranged from her parents and the rest of her immediate family. Several years later, Marta suffered debilitating injuries and was left in a coma when her car was struck by another on her way to work. The hospital contacted Marta's parents – her *legal* next of kin – who made the decision to put Marta in a hospital close to their home. Sue protested, but was told that since she was not a legal spouse, she had no decision making power. When Marta's parents prevented Sue from even visiting Marta, Sue was again told that nothing could be done. Marta is currently seeking legal advice so that she can have some say in Marta's medical treatment. Imagine you are the trial judge. What is your decision?

LESSON 3

WINNING THE RIGHT TO MARRY HISTORICAL PARALLELS

OBJECTIVES:
- To understand past injustices within the institution of marriage.
- To generate a list of marriage attributes that can be used in considering past and present challenges to marriage law.
- To consider the fairness or unfairness of anti-gay marriage laws; to begin to develop a personal stance on the issue.

AGE LEVEL: High School

TIME: 70-80 Minutes

MATERIALS: Handout #6: *Argument in Favor of Proposition 22*; Handout #7: *Limit on Marriages Initiative Statute: Argument Against Proposition 22*; chart paper and markers

BACKGROUND READING: *We Can Change* by Joan Countryman

SUBJECT AREAS: Social Studies (History, Law, Politics, Ethics)

As Americans, we have seen significant changes within the institution of marriage – many within our own lifetimes. The status of women, ability to divorce, and freedom to marry across race are examples of issues that have changed the face of marriage as we once knew it. In this lesson, students explore marriage bans for same-sex couples within the context of earlier prohibitions, and use these historical parallels to determine the fairness of current restrictions. Students are also encouraged to create a set of criteria for exploring marriage eligibility, and to use these criteria to objectively evaluate the current marriage debate.

PART 1: INTERRACIAL MARRIAGE BANS IN AMERICA (10 MINUTES)

Put the following statements on the board:

- "All [such] marriages shall be absolutely void without any decree of divorce or other legal process."
- Such marriages are "unnatural."
- "Almighty God...did not intend for [such people] to mix."

Inform the students that the above statements come from various rulings by judges on cases involving marriage. Ask them to venture some guesses as to which group of people the statements relate. Many students will likely surmise that they are references to same-sex couples. After some speculation, inform the students that they reflect sentiments about interracial marriage that were prevalent until relatively recent times. Share the full text of the above quotes with students:

- "All marriages between a white person and a colored person shall be absolutely void without any decree of divorce or other legal process." (Va. Code Ann. 20-57)
- Racial intermarriage is "unnatural", and would lead to children who are "generally sickly, and effeminate...and inferior in physical development and strength." (Scott v. Georgia, 39 Ga. 321, 323, 1869)
- Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix." (Loving, 388 U.S. at 3, 1958)

Allow some time for students to react to these statements. Point out that at one time, 40 states forbade the marriage of a white person to a person of color. It was not until 1948 that California became the first state to declare unconstitutional a ban on interracial marriage. In the landmark Loving v. Virginia case in 1967, the U.S. Supreme Court finally struck down the remaining interracial marriage laws across the country and declared that the "freedom to marry" belongs to all Americans.

PART 2: DETERMINING THE ATTRIBUTES OF MARRIAGE (20 MINUTES)

Ask students if they think that race is an attribute that should be considered in determining eligibility for marriage. (Many will likely denounce this notion). Challenge students to come up with qualities that they feel make more sense. In small groups of 3 or 4, ask them to brainstorm a set of attributes of marriage (such as emotional compatibility, demonstration of love, commitment over time, economic interdependence, etc.). After about 10 minutes, ask groups to post and share their lists. Create a master class list that reflects the major attributes of all the lists. If there is disagreement amongst students, try to reach some consensus, allow them to vote, or finalize the list in some other fashion. Display the class criteria prominently.

WINNING THE RIGHT TO MARRY: HISTORICAL PARALLELS (CONTINUED)

PART 3: A PRISONER'S RIGHT TO MARRY (10 MINUTES)

Post the following list on the board. Tell students that in 1987, the last time the United States Supreme Court considered the claim of a group of Americans about restrictions on their right to marry, the Court articulated these 4 attributes of marriage common to this group and all other Americans.

(1) expression of emotional support and public commitment;
(2) spiritual significance, and for some the exercise of a religious faith;
(3) the expectation that for most, the marriage will be consummated; and
(4) the receipt of tangible benefits, including government benefits and property rights.

Give students a chance to comment on how this list compares to the one with which the class came up. Ask students to again guess the group of Americans about which the courts were deliberating when they listed these attributes. After some conjecture, inform students that after identifying the above attributes of marriage, the Court decided that *incarcerated prisoners* shared with other Americans the freedom to marry. Because marriage constitutes a legal relationship marked by devotion and commitment, the Court invalidated Missouri's virtually complete ban on marriages of prison inmates (Turner v. Safley, 1987). Give students an opportunity to react to this decision and to offer their opinions as to the right of prisoners to marry.

PART 4: PARALLELS TO MARRIAGE OF SAME-SEX COUPLES (30-40 MINUTES)

Inform the students that, in recent years, yet another group of Americans has turned to the courts in order to win the freedom to marry same-sex couples. As of March, 2000 Vermont is the only state to have ruled that the full benefits and protections of marriage be extended to same-sex couples (though it has not yet been determined whether this will be accomplished through marriage or a separate but equal system). Thirty-one states have adopted anti-marriage measures for same-sex couples and three more have measures pending. In South Dakota, the language is reminiscent of the old Virginia anti-miscegenation code: *"Any marriage between persons of the same gender is null and void from the beginning."* In California, a particularly divisive battle was fought throughout 1999 and early 2000. Proposition 22, the Limit on Marriages Initiative – also known as the Knight Initiative after its sponsor, State Senator Pete Knight – proposed that the following statement be written into state law:

"Only marriage between a man and a woman is valid or recognized in California."

Since California already defines marriage as the union between one man and one woman, this initiative was essentially about blocking recognition of the marriages of same-sex couples performed legally in other states. (Currently, however, there is no state that permits marriage for same-sex couples.)

Ask the students to pretend that they are the voters of California. Divide them into groups of four and ask them to discuss the ballot initiative above. Provide Handouts #6 and #7, which give arguments both for and against the initiative. Direct them to use the class list of marriage attributes they brainstormed earlier in reaching a conclusion. Emphasize that the criteria they developed should be applied objectively to any group under consideration. Ask them to reflect upon the following questions:

- Do same-sex couples have the capacity to reflect the attributes on the class list?
- Is it right for a state to invalidate marriages performed legally in other states?
- Should the state have the right to determine who can and cannot marry based on gender, sexual orientation, race, religion, or any other factor?
- Is there a justification for the definition of marriage as the union between one man and one woman?
- Is the Limit on Marriages Initiative in the best interests of all the citizens of California?

After 10-15 minutes of discussion, allow students to vote by anonymously writing 'yes' or 'no' on a slip of paper and dropping it in a shoebox or other container. (Emphasize that abstention is a perfectly acceptable option). Ask students to share some of the thoughts that came up in their small groups and address any questions that students wish to bring up. Tally the results of the class vote and share the outcome with all. Before concluding the lesson, report the results of the actual ballot in California that took place on March 7, 2000:

CALIFORNIANS PASS THE LIMIT ON MARRIAGE BALLOT INITIATIVE

PROPOSITION 22 RESULTS

	Votes	Percent
Populace		
Yes	4,160,706	61.4%
No	2,617,838	38.6%
Counties		
Yes	53	91%
No	5	9%

On March 7, 2000 Proposition 22 triumphed in all regions of California except parts of the Bay Area, overcoming opposition from President Clinton, Governor Gray Davis and even moderate Republicans such as Los Angeles Mayor Richard Riordan.

Exit polls conducted by Voter News Service for the Associated Press and television networks showed strong support for the measure from both men and women and from voters of all races and income groups. Democrats opposed it by 2-1, but Republicans backed it by about 6-1.

In California, where surveys have shown support for gay rights but not marriage of same-sex couples, supporters of Proposition 22 said their purpose was not to demean homosexuals but to protect the state's right to define marriage.

"The message is, California is not ready for a marriage between a man and a man," said State Senator Pete Knight, who says the initiative was neither mean-spirited nor bigoted, but an attempt to close a legal loophole that would have forced California to recognize the marriages of same-sex couples if they were someday sanctioned by another state.

WINNING THE RIGHT TO MARRY: HISTORICAL PARALLELS (CONTINUED)

"It's a victory for California families," said Robert Glazier, spokesman for the Yes-on-22 campaign. "We think this will send a strong message to our children for the future of the institution of marriage—that it should remain between a man and a woman."

Opponents say the initiative's passage is a painful setback for gay and lesbian rights. They characterize the proposition as an unnecessary wedge issue because no state currently allows marriage for same-sex couples, and connect the initiative to discrimination and anti-gay violence. They also say similar laws in other states have been used to challenge adoptions, child custody and other benefits for same-sex couples.

No-on-22 campaign manager Mike Marshall said the vote was disappointing but the campaign had given the gay and lesbian community new political strength as well as a determination to win equal benefits for their families, through legislation, an executive order or a future ballot measure. "Every march for equality is three steps forward and one step backward, and this is a step backward," commented Marshall. "But the vast majority of voters under 40 voted against the initiative. This is a generational issue. We're patient."

HANDOUT

6

ARGUMENT IN FAVOR OF PROPOSITION 22

Dear Fellow Voter:

I'm a 20-year-old woman voting for only the second time on March 7th. I'm proud, excited, and a bit nervous, because I take my civic responsibilities seriously. Not only that, but among millions of people supporting Proposition 22, the *Protection of Marriage Initiative*, I have the honor of writing you to explain why Californians should vote "Yes" on 22.

Proposition 22 is exactly 14 words long: *"Only marriage between a man and a woman is valid or recognized in California."*

That's it! No legal doubletalk, no hidden agenda. Just common sense: Marriage should be between a man and a woman.

It does not take away anyone's right to inheritance or hospital visitation.

When people ask, "Why is this necessary?" I say that even though California law already says only a man and a woman may marry, it also recognizes marriages from other states. However, judges in some of those states want to define marriage differently than we do. If they succeed, California may have to recognize new kinds of marriages, even though most people believe marriage should be between a man and a woman.

California is not alone in trying to keep marriage between a man and a woman. In 1996, *Democrats and Republicans in Congress overwhelmingly passed a bill* saying that the U.S. government defines marriage as between a man and a woman only, and said each state could do the same.

President Clinton signed the bill the day after he received it. So far, 30 states have passed laws defining marriage as between a man and a woman.

Now it's our turn, and I'm voting "Yes" on 22 to ensure that decisions affecting California are voted on by Californians...like us.

It's Our State, it should be Our Choice.

But some people today think marriage doesn't matter anymore. They say I have to accept that marriage can mean whatever anyone says it means, and if I don't agree then I'm out of touch, even an extremist.

My family taught me to respect other people's freedoms. Everyone should. But that's a two way street. If people want me to respect their opinions and lifestyles, then they should grant me the same courtesy by respecting MY beliefs. And I believe that marriage should stay the way it is.

It's tough enough for families to stay together these days. Why make it harder by telling children that marriage is just a word anyone can re-define again and again until it no longer has any meaning?

Marriage is an important part of our lives, our families and our future. Someday I hope to meet a wonderful man, marry and have children of my own. By voting "Yes" on 22, I'm doing *my part today* to keep that dream alive.

Miriam G. Santacruz

From "2000 CA Primary Election Voter Information Guide/Ballot Pamphlet," found on the Vote 2000 Website: http://vote2000.ss.ca.gov/VoterGuide/Propositions/22yesarg.htm
Arguments in this statement are not the opinions of the authors of the Web page and have not been checked for accuracy by any official agency.

HANDOUT

7

LIMIT ON MARRIAGES INITIATIVE STATUTE: ARGUMENT AGAINST PROPOSITION 22

The California Interfaith Alliance
The League of Women Voters of California
The California Teachers Association
Senator Dianne Feinstein
Senator Barbara Boxer
Congressman Tom Campbell
Vice President Al Gore
Senator Bill Bradley
The California Republican League

And thousands of husbands, wives, mothers and fathers from across California oppose Proposition 22.

The purpose of Proposition 22 is not to ban marriage for same-sex couples in California. It is already banned.
You don't need to support marriage for gay and lesbian couples to oppose Proposition 22, the "Knight Initiative". You just have to believe in a few basic values – keeping government out of our personal lives, respecting each other's privacy, and not singling out one group for discrimination or for special rights.

Voting no on 22 will *NOT* legalize same-sex marriage, no matter what the supporters of Proposition 22 say.
The real purpose is to use Proposition 22 as a tool in court to deny basic civil rights to lesbians and gays and their families. Proposition 22 will be used, as similar laws have been in other states, to deny the right of partners to visit their sick or injured companion in hospitals, to deny the right to inheritance, and even to deny the right of a remaining companion to live in their home.

Proposition 22 will result in unnecessary government interference.
Whether we think homosexuality is right or wrong, we should stay out of other people's private lives and let people make their own decisions about moral values and commitments. Californians treasure our right to be left alone and to lead our lives the way we wish. Adding more laws about private behavior and personal relationships isn't a solution to anything.

Proposition 22 divides us.
Californians have seen too many efforts in recent years to pick on specific groups of people and single them out for discrimination. Supporters of Proposition 22 are spending millions of dollars to convince you that basic rights should be denied to a group of Californians. They want us to believe that attacking same-gender couples will solve problems instead of causing them. But we've seen what spreading fear and hatred has already done. According to the Attorney General, more than 2,000 Californians were victimized by hate crimes last year alone. California has had enough of the politics of fear and hate. Voting "No" on 22 will send that message.

Proposition 22 is unfair.
Even when gay or lesbian couples have been together for many years, one companion often has no right to visit a sick or injured companion in the hospital. They often can't get basic health insurance for dependents. They have no inheritance rights. That's wrong. And Proposition 22 will make it more difficult to right this wrong – by singling out lesbians and gays for discrimination.

Proposition 22 doesn't solve any problems...

It adds more government interference to our lives...

It singles out one group for attack...

It tears us apart instead of bringing us together.

VOTE NO ON 22.

Antonio R. Villaraigosa
Assembly Speaker, California State Legislature

The Right Reverend William E. Swing
Bishop of the Episcopal Diocese of California

Krys Wulff
President, American Association of University Women, California

From "2000 CA Primary Election Voter Information Guide/Ballot Pamphlet," found on the Vote 2000 Website: http://vote2000.ss.ca.gov/VoterGuide/Propositions/22noarg.htm
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LESSON 4

THE NOTION OF *INFLUENCE*

One of the fears around legalizing marriage of same-sex couples is that legitimizing LGBT relationships will somehow "influence" young people in negative ways, perhaps to "try out" same-sex relationships for themselves. This is most evident in the bans many schools and libraries have instituted with regard to books and materials that depict same-sex relationships. In this lesson, students will have the opportunity to review two of those books and decide for themselves to what extent they hold the power to "influence" young people. Students will also consider the real-life situation of a young girl invited to participate in a same-sex wedding, and will provide advice as to what they think is the right course of action.

OBJECTIVES:
- To define *influence* and identify some of the influences in our lives.
- To explore the idea – held by some – that exposure to same-sex relationships can influence young people in negative ways.
- To analyze real-life situations involving youth exposure to same-sex relationships.

AGE LEVEL: High School

TIME: 1 Hour 20 Minutes-1Hour 40 Minutes (If only one period is available, leave out Part 4)

MATERIALS: Handouts #8 and #9: *Text of Daddy's Roommate/ Wedding*; Handout #10: *'Daddy's Roommate' in the News*; Handout #11: *Ask Annie*; chart paper, and markers

BACKGROUND READING: *Kids With Gay Parents* by Joseph P. Shapiro with Stephen Gregory

SUBJECT AREAS: Social Studies, English/Literature, Writing, Media

PART 1: IDENTIFYING INFLUENCES (10 MINUTES)
Put the following definition on the board:

Influence: The power or capacity to cause an effect in indirect or intangible ways.

Ask students to think for a moment about ways in which they have been influenced in the course of their lives. Ask volunteers to share some of these influences – they may be people, ideas, experiences, or other forces – and to indicate how and in what ways they have been influential. Ask them to specifically think about the forces that have shaped their feelings about love, marriage, and family. List some of their responses on the board. Spend about 5 minutes on this discussion.

PART 2: DADDY GETS MARRIED (30-40 MINUTES)
Distribute Handouts #8/9: *Text of Daddy's Roommate/Wedding*. (Alternatively, get copies of these books to read aloud/display in class). Explain that these children's books have been banned in many schools and libraries because they depict same-sex couples. Point out that some people fear that exposure to such relationships hold the power to *influence* young people in negative ways, who may then "try out" such relationships themselves. Ask students to read the texts and to consider the extent to which they have the power to *influence* readers. Distribute Handout #10: *'Daddy's Roommate' in the News*, a recent article chronicling the controversy in one Montana library over *Daddy's Roommate*. After the students have had the opportunity to read the texts and article, ask them to write a letter to the editor of the *Billings Register*. In their letters, students should take a stance on the issue, explaining whether or not they feel books depicting same-sex couples should be included in schools and libraries. Challenge students to justify their stances with detailed arguments.

PART 3: DO SAME-SEX RELATIONSHIPS HAVE THE POWER TO 'INFLUENCE'? (20 MINUTES)
Ask for volunteers to read their letters aloud to the class and allow students to respond to one another's ideas. Use their letters as a springboard for exploring the following questions:

- Can exposure to information/images about same-sex couples (through books, TV, film, class lessons, etc.) influence your beliefs? If so, how and to what extent?
- Does exposure to such relationships have the power to shape your behavior and/or sexual identity?
- Is it beneficial or detrimental to discuss issues such as marriage of same-sex couples with young people in school or in other public forums? Why or why not? What evidence can you present to support your stand?

PART 4-ASK ANNIE (20-30 MINUTES)
Distribute Handout #11: *Ask Annie*. Explain to students that this letter is based on one written to an advice colum-

THE NOTION OF *INFLUENCE* (CONTINUED)

nist by a parent concerned about whether or not to allow her 9-year-old daughter to participate in the wedding of her uncle and his same-sex partner. Ask students (individually or in small groups) to assume the voice of the columnist and to write a response to the letter. Ask students to consider the class discussion and the following questions as they write:

- Is there any harm in allowing the girl to participate? In barring her from the wedding? Is it possible that the experience will *influence* her in some way?
- Who should make the final decision? Is a 9-year-old capable of such a decision?
- If the parent considers Pete "a great person," a "devoted uncle," and has "no problem" with his relationship, why can she "not condone that lifestyle"? What are her underlying fears/beliefs?
- Is the parent's attitude prejudiced/discriminatory or not?

When students have finished writing, ask for volunteers to read their responses aloud. Allow some time for discussion, and encourage students to think carefully about the consequences of sheltering children from different people and experiences. No matter what our moral stance is on any particular issue, we all have to cohabitate in a world with others who look, think, and behave differently. Are we really doing young people a service when we shield them from this inevitable diversity?

If you're curious as to Annie's answer to this question, read on:

Gay couples that wish to have a ceremony to celebrate their union should not be asking a 9-year-old to participate. It would be too confusing. A service for those in the inner circle would be OK, but please, no children. Tell your brother-in-law that your daughter will not be participating. (PS I agree with her that a 9-year-old is a bit beyond the "flower girl" range.)

HANDOUT

8

TEXT OF *DADDY'S ROOMMATE* BY MICHAEL WILLHOITE

My Mommy and Daddy got a divorce last year.
Now there's somebody new at Daddy's house.
Daddy and his roommate Frank live together,
Work together,
Eat together,
Sleep together,
Shave together,
And sometimes even fight together,
But they always make up.
Frank likes me too!
Just like Daddy, he tells me jokes and riddles,
Helps me catch bugs for show-and-tell,
Reads to me,
Makes great peanut butter-and-jelly sandwiches,
And chases nightmares away.
When weekends come,
We do all sorts of things together.
We go to ball games,
Visit the zoo,
Go to the beach,
Work in the yard,
Go shopping,
And in the evenings, we sing at the piano.
Mommy says Daddy and Frank are gay.
At first I didn't know what that meant. So she explained it.
Being gay is just one more kind of love.
And love is the best kind of happiness.
Daddy and his roommate are very happy together,
And I'm happy too!

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HANDOUT

9

TEXT OF *DADDY'S WEDDING* BY MICHAEL WILLHOITE

One day Mommy and Steven and I had a picnic in our backyard. Steven is my new stepfather. He can play the guitar and loves baseball as much as I do!

"Hey, Nick," Steven said, "Why don't you go play. I'll barbecue the chicken."

My friends wanted to play volleyball. Soon we were thirsty, so Mommy served us her special strawberry punch.

Daddy and his roommate Frank were the last to arrive. Clancy came, too.

Clancy's a great dog, but he can sure get in the way!

When the picnic was almost over, Daddy and Frank took me to the garden swing to talk. Daddy said, "Nick, we want to invite you to a special occasion next month. We're going to get married."

"Can men get married to each other?" I asked.

"We call it a commitment ceremony, Nick," said Frank. "That's like a wedding." Mommy and Steven joined us, and Daddy and Frank told them about it. "We want you all to come," Daddy said.

Mommy hugged Daddy and said, "We'd love to join, Daniel! It sounds like a lot of fun. Nothing's better than a wedding in June."

Daddy turned and said, "Nick, would you do me the honor of being my best man? We want you to be an important part of our big day." And Frank said, "You're the first one we thought of."

This was terrific! "I'd love to, Dad," I said. "I'll be the *best* best man you've ever seen!"

On the day of the wedding, we drove to Daddy and Frank's house on the other side of town.

The yard was filled with people. There were flowers everywhere. Balloons and flags hung from the trees.

My Grandma and Grandpa were already there. A lot of Daddy and Frank's friends came, too.

Mommy and Steven sat together in the front row. I stood beside Reverend Powell, waiting for Daddy and Frank to come out of the house.

Music started playing, and Daddy and Frank appeared, looking *very* happy. When the music ended, Reverend Powell said, "Daniel and Frank have written vows they'd like to read."

First, Daddy told us how he met Frank. Then Daddy turned to Frank and said, "I'm looking forward to spending the rest of my life with you."

Then Frank spoke. He vowed to love Daddy, and take care of him in sickness and in health. Frank turned to me. "And we already have a son to share." That was my favorite part of the wedding.

Reverend Powell turned to me. "Nick, I believe you have the rings."

First, Daddy put a gold ring on Frank's finger. Then Frank slipped a ring on Daddy's finger.

After that, Reverend Powell said they were married. And suddenly hundreds of balloons fell down all over the place.

Reverend Powell said, "Daniel and Frank's friends have prepared a lovely reception. Let's enjoy ourselves!"

Everyone turned to the tables at the side of the yard, where there were plates of sandwiches, bowls of punch, and a huge white wedding cake...

And Clancy!

"You *bad* dog!" Grandma said. "Ruining that lovely cake..." But Daddy and Frank just laughed.

"It's just a little messed up, and only on the side," I said. "And look, it still tastes good!"

The cake really was good. We all drank punch and ate until we almost busted – although Clancy managed to get into the sandwiches, too.

The day after the wedding, Daddy and Frank went to San Francisco for their honeymoon. I hope they had as much fun as I did that week...

I went to baseball camp!

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HANDOUT

10

'DADDY'S ROOMMATE' IN THE NEWS

Family Action Committee Challenges Library Over 'Daddy's Roommate'
***Billings Register*, December 10, 1999**

BILLINGS – Having failed to force the Oak Street Public Library to restrict access to two controversial children's books dealing with homosexuality, conservatives have turned their attention to the Freeport Community Library.

The Montana Family Action Committee wrote a letter to library board members on Friday and issued a public statement Tuesday calling for the book *Daddy's Roommate* to be removed from the library's collection or at least kept away from children.

Mark Johnson, the group's executive director, said the request was prompted by the concerns of a mother who reported finding the book on the floor in the children's section.

"The Freeport Community Library should respect the right of parents to choose the time they believe is most appropriate to discuss with their children the issue of human sexuality generally, and homosexuality specifically," Johnson wrote Tuesday. "Parents whose children use the Freeport Community Library will lose that right if books such as *Daddy's Roommate* continue to be shelved in the children's area of the library."

Library Director Linda Rogers said the book about a gay parent has been in the library's collection since October 1992 and has never before been the subject of controversy.

"It is shelved in our youth services nonfiction section," she said. "We do not shelve it with picture books."

Rogers said the library board would hear public testimony on the issue this afternoon. Johnson said he would attend the meeting to ensure directors understand that children should not have unrestricted access to books that suggest homosexual relationships are normal.

"We are concerned that the subject matter of this book is not in line with the traditional family values that parents are trying to teach their kids throughout the state of Montana," he wrote in Friday's letter.

Last summer the Montana Family Action Committee and the Montana Christian Coalition joined a campaign started by a group of parents to have children's access restricted to *Daddy's Roommate* and *Heather Has Two Mommies* in the Oak Street Public Library.

The books were moved from the library's picture book section to its children's nonfiction section as a compromise, but the groups failed in their attempt to get library officials to remove the books entirely or relocate them to an area where parents could have more control over access.

Oak Street Public Library Director Janice Mott said parents should monitor their children's library use or set clear limits for them.

HANDOUT

11

ASK ANNIE

The following letter is based upon a query from a newspaper advice column. How would you have responded? Write your reply below.

Dear Annie:

My husband and I have been married for 15 years. We have a wonderful marriage and two terrific children. The problem I am writing about involves my husband's brother. He is gay.

"Pete" is a great person and a devoted uncle to our children. Until now, we haven't had a problem with Pete or his live-in companion "Bob." Our children think of Bob as their uncle's friend. The two of them have been together for 20 years. Everything was fine until Pete and Bob decided to get "married" and asked our 9-year-old daughter to be the flower girl at their wedding.

I am raising my children to believe that marriage is a sacred union between a man and a woman. I do not want my daughter to participate in Pete's wedding. My husband feels the same way. In fact, he doesn't even want to go. So far, the only comment my daughter has made is "I am too old to be a flower girl."

I am not prejudiced against gay people, Annie, but I do not condone that lifestyle, either. Please tell me what to do

– Predicament in Pittsburgh

Dear Predicament,

LESSON 5

A SPIRITUAL CONTRACT: RELIGIOUS UNIONS AND THE MARRIAGE DEBATE

It is impossible to conduct any debate on the issue of marriage without a consideration of the impact of religion on the institution. Some of the most heated arguments around marriage have come from within communities of faith. In this lesson, students are asked to explore the meaning of religious marriage and to identify marriage customs within their own religious experiences. Students are then challenged to respond to a case study of one religious leader, who's decision to perform marriages between people of the same sex in defiance of church law, sparked much debate amongst community members.

OBJECTIVES:
- To define religious marriage and identify some of the customs associated with religious unions
- To understand the differences between civil and religious marriage
- To use a case study as a vehicle for exploring the marriage debate from a religious perspective

AGE LEVEL: High School

TIME: 65 Minutes-90 Minutes

MATERIALS: Handout #12: *Gay Marriages Debated*; Handout #13: *Response to the Judicial Charge*; Handout #14: *A Brief Timeline of the Events Surrounding the Creech Trial*; chart paper and markers

BACKGROUND READING: *Marrying David: Traditions and Spiritual Activism* by the Reverend Pressley Sutherland; *Statement on Same-Sex Marriage* by Reverend Joseph L. Charron & Reverend William S. Skylstad

SUBJECT AREAS: Social Studies (Religion, Current Events), Media, Journalism, English (Composition)

PART 1: RELIGIOUS MARRIAGE PRACTICES: HOW ARE THEY DISTINCTIVE? (15 MINUTES)

Assuming that students have participated in Lessons 1 and 2, they will have already formulated personal definitions of marriage and learned the meaning of civil marriage. If not, you may want to begin this lesson by eliciting some of the students' ideas about what marriage is as well as offering the legal definition of marriage as recognized by the state. Once these ideas have been established, tell them that there is yet a third conception of marriage that differs significantly from the first two – religious marriage. Ask students to discuss the ways in which – according to their own personal experiences – religious marriage is distinctive. Ask students to identify customs and traditions that characterize weddings/marriages within their own religious communities. If you wish, list their responses on the board for reflection by the class. Allow 5-10 minutes for discussion.

PART 2: NOT THE SAME THING: RELIGIOUS VS. CIVIL MARRIAGE (10-15 MINUTES)

Display the following characteristics of religious marriage on an overhead or large chart. Ask for student volunteers to read each point aloud. Answer any questions students may have about these characteristics.

- Civil marriage and religious marriage are different institutions, but often confused with each other because states allow the religious ceremony to double as the state ceremony.
- Just as there are different marriage laws in all the states, there are different definitions of marriage in every religious tradition.
- Unlike civil definitions, religious definitions of marriage frequently mention childbearing, sexual relations, living arrangements, and/or religious belief and observance.
- When clergy or congregations marry couples it is a religious rite, not a civil ceremony, though the government may recognize it. Clergy and congregations choose whom they marry. They aren't compelled to accept the state's marriage definition, and indeed, many religious institutions don't accept it. Many religious institutions are more restrictive than the state, rejecting interfaith marriages or remarriages after divorce. And some have a broader definition, blessing the unions of same-gender couples.

With regard to the issue of marriage of same-sex couples, inform students that:

- Though some religious institutions prohibit the marriages of same-sex couples (such as the Methodist and Catholic Churches, and congregations of Orthodox Jews), many other faiths recognize religious unions or marriages between same-sex couples,

A SPIRITUAL CONTRACT: RELIGIOUS UNIONS AND THE MARRIAGE DEBATE (CONTINUED)

even in places where such unions are not recognized by the government. Individual congregations of reform Jews, American Baptists, Buddhists, Episcopalians, Presbyterians, Unitarian Universalists, Methodists, the Society of Friends and members of the United Church of Christ have performed marriages for same-sex couples.

- Even after civil marriage becomes available to same-sex couples, religious institutions will retain the right to decide for themselves whether to perform or recognize any marriage, just as they already do for every couple. No court decision or legislative enactment can change the basic tenets of a religious faith.

PART 3: REVEREND JIMMY CREECH: A CASE STUDY (40-60 MINUTES)

Tell students that you will be asking them to consider marriage of same-sex couples from a religious standpoint. Emphasize that they will not be asked to defend or attack their own or their classmates' religious beliefs/affiliations. Instead, they will be considering a case study of the Reverend Jimmy Creech, a Methodist pastor who ultimately lost his position within the church over the issue of marriage of same-sex couples. Distribute Handout #12: *Gay Marriages Debated*, which is a transcript of an actual newscast that aired in Connecticut. Ask for 6 volunteers to assume the roles within the newscast, and to render a dramatic reenactment of the broadcast for the class. This will provide students with some context and background information. After the role-play, challenge students to develop TV news-style editorials that reflect their opinions about the situation. Give them a copy of Handout #13: *Response to the Judicial Charge* and Handout #14: *A Brief Timeline of the Events Surrounding the Creech Trial*, which will provide more detail and a statement from Reverend Creech. (This can be done individually or in small groups of 3-4). Ask students to consider the following questions while formulating their editorials:

- Jimmy Creech knowingly disobeyed a UMC principle that he felt was wrong. Is it justifiable to break a rule that goes against one's belief system or as a form of protest? If not, why? If so, under what circumstances?
- Do you think the UMC – and religious institutions in general – should lift marriage prohibitions to reflect the times in which we live or do you think it is more important to uphold traditional principles?
- Should Reverend Creech have been punished for his behavior? If so, what type of sanction would have been most appropriate? Did he deserve to lose his standing as a pastor within UMC?

When the students have finished writing, ask each group to come up and deliver their editorials in the style of a newscaster. Allow time for questions and discussion. Suggest that students find out what the beliefs about marriage of same-sex couples are within their own religious institutions. Encourage them to discuss these beliefs with family members and religious leaders, and to begin to develop a personal stance on this issue.

HANDOUT

12

GAY MARRIAGES DEBATED

(WTNH) The following newscast was aired on August 9, 1998 by WTNH, a news station serving the Hartford/New Haven, Connecticut area.

News Anchor: The issue of gay marriages is back in the spotlight. The United Methodist Church is deciding whether or not to penalize ministers for performing gay or lesbian marriages.

News Channel 8's Judy Chong reports.

Judy Chong: Same-sex marriages – a controversial issue that state governments are grappling with. And churches, too. This time the United Methodist Church.

Rev. Jimmy Creech, Methodist Minister: "I think it's unjust. I think it's essentially institutionalized bigotry."

Judy Chong: It all started when Reverend Jimmy Creech married 2 lesbians in Nebraska. Church guidelines forbid ministers from performing the ceremony. Reverend Creech was tried before church peers and later acquitted. This weekend, the denomination's judicial council is deciding whether or not to continue punishing ministers who marry gays.

Rev. Creech: "I think it's an offense to exclude gays and lesbians from full participation in the life of the church."

Rev. Joe Florence, U.M.C.: "It's not about whether they're welcome because we say that they are. It's about the covenant we have as a denomination."

Judy Chong: Parishioners we talked to here in Connecticut are divided on the subject of gay marriages.

Barbara Rubino, Parishioner: "I disagree with same-sex marriages, I disagree with it."

Deborah Gondola, Parishioner: "There's so many heterosexual marriages that don't work that if this relationship can work more power to them."

Judy Chong: A formal decision could come by next week. The United Methodist Church is the second largest Protestant denomination. According to the National Council of Churches, the United Church of Christ is the only mainline Protestant church that does not disapprove of homosexual ceremonies.

HANDOUT

13

RESPONSE TO THE JUDICIAL CHARGE

By Jimmy Creech, Senior Pastor
First United Methodist Church, Omaha, Nebraska
January 26, 1998

Introduction

On September 16, 1997, a judicial complaint was filed against me, alleging that I am in "disobedience to the Order and Discipline of The United Methodist Church" because I "performed a 'covenanting ceremony' that celebrated a homosexual union between two women," based upon Paragraph 65C of the Social Principles and Article IV, Paragraph 15.6, of The Book of Discipline.

On January 23, 1998, the Committee on Investigation of the Nebraska Annual Conference referred the complaint to a church trial to be prosecuted as a chargeable offense. I welcome the trial as an opportunity to both make my case and to challenge the unjust position of the United Methodist Church regarding lesbians and gay men. It is my hope that when the final verdict has been determined, the Social Principles will be affirmed as "advisory and persuasive" and that there will be greater openness, acceptance and justice for gay men and lesbians in the United Methodist Church.

I contend that I have not acted in disobedience to the Order and Discipline of The United Methodist Church, but, after "prayerful, studied dialogue of faith and practice," have acted in a way consistent with the gospel of Jesus Christ and with my calling as a pastor in The United Methodist Church. It is my intention in this response to describe what led to this discernment.

The Covenant Ceremony

On September 14, 1997, I celebrated a Covenant Ceremony for two women, I will call them Mary and Martha, in the sanctuary of First United Methodist Church in Omaha, Nebraska. Approximately thirty family members and friends came to be with them as they spoke vows of love and fidelity to each other. Mary's two sons and daughter and Martha's daughter and brother stood with the them during the ceremony.

The liturgy consisted of essentially the same rubrics as in the "Service of Christian Marriage" found in The United Methodist Book of Worship: There was a prelude by a classical guitarist; I greeted the gathered community; Mary and Martha greeted the community; the community responded with a greeting to the couple that celebrated the joy of the occasion; scripture was read and a homily preached; vows of love and fidelity were spoken by Mary and Martha to one another; rings were exchanged as signs of their covenant; I prayed God's blessings upon them in the covenant they had created together, and prayed for God's grace to sustain them in their relationship, giving them the strength of God's love to fulfill the vows they had made and to create a home in which the peace of Christ was present; Mary and Martha lighted a unity candle; Holy Communion was celebrated (I first served Mary and Martha, then they served me and the gathered community); the Lord's Prayer was sung a cappella by a friend of Mary and Martha; Mary and Martha once again addressed the community, thanking them for their love and support; the gathered community responded with words of thanksgiving for and blessing upon their union; the benediction was spoken; the postlude by a classical guitarist followed as Mary and Martha greeted their families and friends at the steps of the chancel area.

The reception was held at the church, prepared and hosted by members of The United Methodist Women of First United Methodist Church.

In short, it was a very moving, intimate, simple, beautiful and holy occasion, a true celebration of love and lifelong commitment these two people have for one another in the context of their faith and in the presence of God, their families and friends.

I was honored and privileged to be a part of this occasion. It was an occasion of worship that all United Methodists and people of faith should celebrate.

Yet, I was aware that all would not. When I accepted the invitation to celebrate this covenant ceremony for Mary and Martha, I was aware that there was strong feeling within The United Methodist Church against "practicing" lesbians and gay men. I was aware that language had been added to the Social Principles at the 1996 General Conference advising against that the celebration of "homosexual unions." Also, I had been instructed by my bishop, Joel Martinez, not to celebrate this ceremony. I felt Bishop Martinez had to so instruct me because of the institutional pressures placed upon him by virtue of his office. So, I knew that what I was doing was potentially in conflict with an official position of The United Methodist Church articulated in the Social Principles.

However, it is my belief that the position taken by The United Methodist Church regarding same-sex unions, as well as that regarding "the practice" of homosexuality, is wrong, unjust, discriminatory and inconsistent with the spirit of Christ and our Wesleyan and Methodist traditions. As a pastor, I could not in good conscience say "no" to the invitation. To do so would be to give my assent to this unjust position of the Church and, consequently, to give it power. This would be a failure on my part to be true to my calling as a minister of the gospel and a loyal United Methodist. To say "no" would be tantamount to forfeiting my calling as a pastor.

In addition, while I respect the opinion of Bishop Martinez, I believe his instruction to me not to celebrate the covenant ceremony was based upon his interpretation of the Social Principles as Church Law, an interpretation I believe to be insupportable and erroneous. Consequently, I did not believe his instruction to be compelling.

HANDOUT

14

A BRIEF TIMELINE OF THE EVENTS SURROUNDING THE CREECH TRIAL

September, 1997: Reverend Jimmy Creech of the First United Methodist Church in Omaha, Nebraska performs a same-gender covenant ceremony in defiance of Church doctrine and the instructions of his local Bishop.

November, 1997: Creech is put on a 60-day suspension by the Nebraska Area Bishop.

March, 1998: After a church trial, Creech is acquitted and fully reinstated as pastor of the First United Methodist Church. (The jury votes 8-5 that Creech disobeyed the Order and Discipline of the church, but a vote of 9 is needed to convict).

May, 1998: Creech announces that he will take a leave of absence from the church after the Bishop indicates that he will not reappoint Creech when his contract ends.

August, 1998: The United Methodist Church votes to uphold the same-sex marriage prohibition as originally stated in the Social Principles of the Book of Discipline.

April, 1999: Creech performs another same gender covenant ceremony for 2 men.

November, 1999: A church trial is held, at which the jury renders a verdict of guilty with a vote of 13-0. Creech's credentials are stripped and he is no longer a pastor in the United Methodist Church.

LESSON 6

I NOW PRONOUNCE YOU... VERMONT'S IMPENDING MARRIAGE LEGISLATION

OBJECTIVES:
- To understand the recent Vermont decision and the question currently before the legislature
- To apply historical learnings about "separate but equal" to the marriage debate
- To consider international human rights practices as one criterion by which a decision in Vermont might be reached.
- To consider the practices of other nations in formulating a recommendation for the Vermont State Legislature

AGE LEVEL: High School

TIME: 2 Hours 10 Minutes-3 Hours 25 Minutes

MATERIALS: Handout #15: *Separate but Equal?*; Handout #16: *Universal Declaration of Human Rights (Abbreviated Version)*; Handout #17: *International Recognition of Same-Sex Relationships; The Universal Declaration of Human Rights (Official Version of the United Nations)*-see Appendix 1

BACKGROUND READING: *The Vermont Decision: Context and Implications* by Lambda Legal Defense and Education Fund, Gay & Lesbian Advocates & Defenders, and the Gay, Lesbian and Straight Education Network

SUBJECT AREAS: Social Studies (History, Current Events, Global Studies, Law, Politics)

In December 1999 Vermont became the first U.S. state to rule that the benefits and protections of marriage be conferred on same-sex couples. The Vermont legislature is currently deciding whether this decision will be fulfilled through full civil marriage or a separate but equal system, a painfully familiar dilemma within the context of American civil rights history. The Vermont legislature is not the first governing body – regional or national – to grapple with the question of marriage of same-sex couples. Over the past 11 years, more than 20 countries worldwide have enacted some form of legislation that impacts same-sex couples. In this session, students will first apply the historical lesson of "separate but equal," taken from the era of racial segregation, to the question before the Vermont legislature today. Students will then assume the role of advisors, making recommendations to the Vermont legislature based upon international human rights practices and the current regulations of other nations.

*Note: If possible, assign students to read *The Vermont Decision: Context and Implications* (see Background Reading) and Handout #15: *Separate but Equal?* prior to this lesson.

PART 1: SETTING THE STAGE (10-25 MINUTES, DEPENDING UPON WHETHER THE READING IS DONE PRIOR TO OR DURING THE SESSION)

Provide students with background information on *Baker v. State of Vermont*, the landmark 1999 decision that ruled the benefits and protections of marriage be extended to same-sex couples. (See Background Reading: *The Vermont Decision: Context and Implications*). Emphasize that the Vermont Supreme Court decision establishes the *rights* of same-sex couples, but not the *system* by which those rights will be delivered. The Vermont State Legislature has been charged with this weighty task and is expected to begin hearings in 2000. Thousands of citizens from across the nation have already bombarded the legislature with demands that access to full civil marriage be granted or denied to same-sex couples. Some of those opposed to full marriage rights are pressuring the legislature to implement a "separate but equal" system of registered partnership like the ones adopted by at least seven nations to date (Denmark, Norway, Greenland, Sweden, Iceland, the Netherlands, and France).

Inform students that, during this exercise, they will be assuming the role of advisory panel members appointed by the Vermont State Legislature to study the marriage issue and make informed recommendations. In order to accomplish this task, they will consider three areas:

- Historical parallels to the notion of "separate but equal"; specifically, lessons learned from the era of racial segregation;
- The Universal Declaration of Human Rights and just practices within the context of international humanitarian standards;
- The practices of other nations who have enacted legislation regarding the

I NOW PRONOUNCE YOU... VERMONT'S IMPENDING MARRIAGE LEGISLATION (CONTINUED)

unions of same-sex couples – learning from their successes and mistakes.

Select 6 students to act as the Vermont State Legislature, a group that will be charged with hearing recommendations and raising questions. Divide the remaining students into groups of 4 and inform them that each group represents an advisory unit that will present its recommendations at the end of the activity.

PART 2: LOOKING BACK, LOOKING FORTH: HISTORICAL PARALLELS TO "SEPARATE BUT EQUAL" (20-30 MINUTES, DEPENDING UPON WHETHER THE READING IS DONE PRIOR TO OR DURING THE SESSION)

Tell students that the Vermont case is not the first instance in which a "separate but equal" system of justice has been debated. A legal precedent for "separate but equal" – with regard to racial segregation – was established in *Plessy v. Ferguson* (1896) and was not reversed until the *Brown v. Board of Education* decision (1954). Distribute Handout #15: *Separate but Equal?* and allow students time to read the case summaries (if they have not already done so for homework).

Direct the groups toward *"What Does Separate but Equal Look Like?,"* the worksheet attached to Handout #15. Instruct each group to consider the practical or day-to-day ramifications of a "separate but equal" system. On the left side of the sheet they should list what "separate but equal" looked like for African Americans living between the *Plessy* and *Brown* decisions, paying special attention to the social and emotional consequences of such a system. For example, students might indicate that young people had to often travel great distances to reach a "colored" school or that African Americans had to remain thirsty – even with a fountain nearby – until a "colored" fountain could be found. They might also think about what this system looked like for White Americans, who may never have had opportunities to relate to people who looked different from themselves.

On the right side of the worksheet, students should list what "separate but equal" would look like for same-sex couples living under a system of registered partnership instead of marriage. This column will be significantly more challenging to complete as most of us have never been asked to consider the lives of sexual minorities with as much thought as we have been asked to reflect upon the experiences of racial minorities. Students might write that same-sex couples would be limited in terms of where, when, and to whom they could go to secure a "separate but equal" partnership license. In addition, couples might find that the alternative designation results in fewer religious leaders willing to perform a ceremony, and fewer friends and family members acknowledging that they are as "married" as different-sex couples.

The group of 6 representing the State Legislature should participate in this activity, but should generate questions raised by the "separate but equal" issue that they can later pose to the advisory panel. For example: If same-sex couples receive full marriage rights, then how are they harmed by a separate designation for their relationships? Or: If there is no difference in the benefits conferred, then why should we [the legislators] entertain the notion of a separate system for conferring those rights?

PART 3: AN INTERNATIONAL HUMAN RIGHTS PERSPECTIVE (20-30 MINUTES)

Ask groups to turn next to Handout #16: *Universal Declaration of Human Rights (Abbreviated Version).* Provide each group with one copy of the full text of the Declaration as well (see Appendix 1). Explain that the UDHR was ratified by the 56 members of the United Nations in 1948, in part to ensure that the human rights abuses that occurred during World War II will never be repeated. The UDHR proclaims that recognizing the "inherent dignity and...the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world." Emphasize that, as opposed to civil or legal rights, human rights are defined as those basic standards people need to live in dignity. Human rights are the rights a person has simply because s/he is a human being.

Ask groups to consider whether or not they feel that the spirit of the UDHR compels governments to extend full marriage rights to all people, including lesbian, gay, bisexual, and transgender couples. Instruct each group to survey the documents and discuss this question. Groups will likely notice that article 16 asserts the right to marriage and family; encourage groups to look for other articles that might also relate to the issue of marriage of same-sex couples, such as the right to equality (article 1), freedom from discrimination (article 2), and other relevant articles. Remind students that their ultimate goal is to make an informed recommendation to the legislature, so they should take notes and begin to articulate their thoughts. As stated earlier, the 6 legislators should discuss the documents and record important questions in anticipation of the presentations to come.

PART 4: THINK GLOBALLY, ACT LOCALLY (20-30 MINUTES)

This exercise is the third and final task for each advisory unit. Instruct students that although no other U.S. state has had to consider the questions before them today, many foreign countries have been grappling with this issue for years. Each group will therefore be asked to study the marriage policies of 2-3 nations in an attempt to better understand the issue at hand and to make a more informed recommendation. Cut Handout #17: *International Recognition of Same-Sex Relationships* into strips – 12 countries are represented here, though there are at least a dozen more that have enacted some sort of same-sex couple legislation. Distribute 2 or 3 strips (countries) to each group for consideration. Instruct students to discuss the pros and cons of each country's laws and to extract ideas that can be incorporated into their presentations to the legislature. The 6 legislators should review all 12 summaries and search for patterns, confusions, and potential problems that they can later bring up. It is important for all groups to note that no country has yet provided full marriage equality. While registered partnership provides most of the benefits, it differs from marriage in that:

I NOW PRONOUNCE YOU... VERMONT'S IMPENDING MARRIAGE LEGISLATION (CONTINUED)

- registered partners usually cannot adopt non-related children, or even each other's children
- registered partners usually cannot have an "official" church wedding in the country's established national church
- one of the two registered partners must be a citizen of the country in which the partnership is contracted
- registered partnerships are not recognized outside of the country in which the partnership is contracted (except for the small union of Scandinavian nations)

These issues – particularly adoption, citizenship, and movement between countries – should be given special attention during small-group discussion and the presentations that will follow shortly.

PART 5: GROUP PRESENTATIONS (60-90 MINUTES)

In preparation for their presentations, give each group some time to review their notes, gather their thoughts, and develop their recommendations. Inform each group that they will have 5 minutes to present, and that their recommendations should include learnings from each of the three tasks they were asked to complete. Direct groups to decide if they will elect a spokesperson or divide the presentation amongst group members. When the groups are ready, ask the 6 legislators to sit at the front of the classroom in order to preside over the proceedings. Make sure that each advisory group keeps to its 5-minute limit and allow the legislators to pose only 2 or 3 questions to each group. When all the groups have presented, direct the 6 legislators to retire to their chambers (the corridor outside your classroom will do) in order to draft a plan based upon the advisory panel's recommendations. While they are working, conduct a debriefing conversation with the class. Ask them to comment upon what they have learned and the process in which they have participated. Ask students what they think the Vermont Legislature should do based on their new knowledge. When the 6 legislators are ready, invite them in to share their plan. Encourage students to follow the news and look for updates on the situation in Vermont. You might also want to have them formally write up the plan and send it directly to Vermont lawmakers.

As* At Issue: Marriage *was heading to press, the following took place:

On March 7th, 2000 The Vermont Legislature's House Judiciary Committee approved a bill that would establish "civil unions" for same-sex couples. The bill would accord such couples many but not all of the rights and privileges already enjoyed by heterosexual married couples. The vote was 10-1, with the only "no" vote cast by a lawmaker who says same-sex couples should enjoy all the same marriage rights as heterosexual couples. The bill still must get through the Ways and Means Committee before the full House considers it. Vermont Gov. Howard Dean says he will sign it.

HANDOUT

15

SEPARATE BUT EQUAL?

In 2000, the Vermont State Legislature will begin hearings to decide whether to grant same-sex couples access to full civil marriage or a "separate but equal" system of registered partnership. The question of whether separate can ever be equal has been debated frequently, perhaps most passionately within the context of racial segregation in the United States. Read the summaries below of the two pivotal cases that established and dismantled the legal concept of separate but equal as it related to racial segregation. Consider the lessons of these cases and the implications for marriage legislation today.

PLESSY V. FERGUSON

On June 7, 1892, a 30-year-old "colored" shoemaker named Homer Plessy was jailed for sitting in the "White" car of the East Louisiana Railroad. Plessy was only one-eighths black and seven-eighths white, but under Louisiana law, he was considered black and therefore required to sit in the "Colored" car. Plessy went to court and argued, in *Homer Adolph Plessy v. The State of Louisiana*, that the Separate Car Act violated the Thirteenth and Fourteenth Amendments to the Constitution (which abolished slavery and enforced the equality of the races before the law).

The judge at the trial was John Howard Ferguson, a lawyer from Massachusetts who had previously declared the Separate Car Act "unconstitutional on trains that traveled through several states." In Plessy's case, however, he decided that the state could choose to regulate railroad companies that operated only within Louisiana. He found Plessy guilty of refusing to leave the white car.

Plessy appealed to the Supreme Court of Louisiana, which upheld Ferguson's decision. In 1896, the Supreme Court of the United States heard Plessy's case and found him guilty once again. The *Plessy* decision set the precedent that "separate" facilities for blacks and whites were constitutional as long as they were "equal." The "separate but equal" doctrine was quickly extended to cover many areas of public life, such as restaurants, theaters, restrooms, and public schools.

BROWN V. BOARD OF EDUCATION

In Topeka, Kansas, in the 1950s, a black third-grader named Linda Brown had to walk one mile through a railroad switchyard to get to her black elementary school, even though a white elementary school was only seven blocks away. Linda's father, Oliver Brown, tried to enroll her in the white elementary school, but the principal of the school refused. Brown went to the National Association for the Advancement of Colored People (NAACP) for help. In 1951, the NAACP requested an injunction that would forbid the segregation of Topeka's public schools. At the trial, the NAACP argued that segregated schools sent the message to black children that they were inferior to whites; therefore, the schools were inherently unequal.

The precedent of *Plessy v. Ferguson* allowed separate but equal school systems for blacks and whites, and no Supreme Court ruling had overturned *Plessy* yet. Because of the precedent of *Plessy*, the court felt "compelled" to rule in favor of the Board of Education. Brown and the NAACP appealed to the Supreme Court on October 1, 1951 and their case was combined with other cases that challenged school segregation in South Carolina, Virginia, and Delaware. On May 17, 1954, Chief Justice Earl Warren read the decision of the unanimous Court:

> "We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does...We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal..."

The Supreme Court struck down the "separate but equal" doctrine of *Plessy* for public education, ruled in favor of the plaintiffs, and required the desegregation of schools across America. The Supreme Court's *Brown v. Board of Education* decision did not abolish segregation in other public areas, such as restaurants and restrooms, nor did it require desegregation of public schools by a specific time. It did, however, declare the permissive or mandatory segregation that existed in 21 states unconstitutional. It was a giant step towards complete desegregation of public schools.

BAKER V. STATE OF VERMONT

In a landmark decision, the Vermont Supreme Court ruled on December 20, 1999 in favor of three same-sex couples who challenged the constitutionality of Vermont's marriage laws. Writing for the court, Justice Amestoy declared,

"The extension of the common benefits clause to acknowledge plaintiffs as Vermonters who seek nothing more, nor less, than legal protection and security for their avowed commitment to an intimate and lasting human relationship is simply, when all is said and done, a recognition of our common humanity."

The court concluded that the benefits and protections of marriage must be extended to same-sex couples. The court directed the legislature to remedy the discrimination, making Vermont the first state in the union to extend the legal rights of marriage to same-sex couples. The Vermont State Legislature is now faced with the question of whether to extend full civil marriage to same-sex couples or to create a separate but equal system.

The Plessy v. Ferguson and Brown v. Board of Education cases present historical parallels that cannot be overlooked in deciding the fate of same-sex Vermonters. What do you think Vermont legislators should take away from past lessons in arriving at a just decision today?

HANDOUT

15

SEPARATE BUT EQUAL? (CONTINUED)

What Does "Separate but Equal" Look Like?

For over 50 years, African Americans were forced to live under a system of segregation made legal by the Plessy v. Ferguson precedent. What did this system look like on a day-to-day basis for Americans? What were the social and emotional ramifications for all people? Below, describe some of the features of a racially segregated way of living.

Example: Black children often had to travel great distances, and endure physical hardships, on a daily basis to get to a "colored" school.

The Vermont State Legislature will soon determine whether or not same-sex couples will live within a "separate but equal" segregated system of partnership. What would this look like on a day-to-day basis? What would be the social and emotional ramifications for all people? Below, describe some of the features of a segregated system of partnership.

Example: Friends, colleagues, and family members might not consider same-sex partners to really be married and might treat them differently (e.g., not inviting a spouse to Thanksgiving dinner).

HANDOUT

16

UNIVERSAL DECLARATION OF HUMAN RIGHTS (ABBREVIATED VERSION)

Article 1 Right to equality
Article 2 Freedom from discrimination
Article 3 Right to life, liberty, and personal security
Article 4 Freedom from slavery
Article 5 Freedom from torture and degrading treatment
Article 6 Right to recognition as a person before the law
Article 7 Right to equality before the law
Article 8 Right to remedy by competent tribunal
Article 9 Freedom from arbitrary arrest and exile
Article 10 Right to fair public hearing
Article 11 Right to be considered innocent until proven guilty
Article 12 Freedom from interference with privacy, family, home, and correspondence
Article 13 Right to free movement in and out of the country
Article 14 Right to asylum in other countries from persecution
Article 15 Right to a nationality and the freedom to change it
Article 16 Right to marriage and family
Article 17 Right to own property
Article 18 Freedom of belief and religion
Article 19 Freedom of opinion and information
Article 20 Right to peaceful assembly and association
Article 21 Right to participate in government and in free elections
Article 22 Right to social security
Article 23 Right to desirable work and to join trade unions
Article 24 Right to rest and leisure
Article 25 Right to adequate living standard
Article 26 Right to education
Article 27 Right to participate in the cultural life of community
Article 28 Right to a social order that articulates this document
Article 29 Community duties essential to free and full development
Article 30 Freedom from state or personal interference in the above rights

HANDOUT

17

INTERNATIONAL RECOGNITION OF SAME-SEX RELATIONSHIPS

Parts of this summary have been excerpted from texts originally published by the International Gay and Lesbian Human Rights Commission (IGLHRC) and the Lambda Legal Defense and Education Fund Marriage Project.

ARGENTINA

In 1997, legislation was passed allowing gays and lesbians to claim a widow's or widower's pension. In 1998, a union-run health care program for teachers and flight attendants was extended to include health coverage for domestic partners. Also in 1998, a court recognized the common-law marriage of a homosexual couple. The ruling – the first of its kind in Argentina – grants health benefits to the same-sex partner. (A common-law marriage is a marriage recognized in some jurisdictions and based on the parties' agreement to consider themselves married and sometimes also on their cohabitation).

BRAZIL

Surveys in the Brazilian state capitals of Salvador, Curitiba and Aracaju found that 60 to 80 percent of Brazilians believe gays must have the same rights as heterosexuals and 50 to 65 percent think gay couples should be able to get married. At least seventy-three Brazilian cities and towns-including Sao Paulo, Rio de Janeiro and Brasilia-ban discrimination based on sexual orientation. Legislation to create civil-union contracts for same-sex couples was introduced nationally by Worker's Party Deputy Marta Suplicy in 1995. In 1998, The Brazilian High Court decided to grant property rights to surviving partners in same-sex relationships. Businessman Milton Alves Pedrosa won by unanimous decision of the Brazilian High Court the right to half of the estate of his partner who died of AIDS in 1989.

CANADA

In 1996, the Canadian government extended health, relocation and other job benefits to the same-sex partners of federal employees. During the same year, The Ontario Court of Appeal ruled that same-sex couples must be treated as common-law couples under the Family Law Act. (Common-law refers to marriages recognized in some jurisdictions and based on the parties' agreement to consider themselves married and sometimes also on their cohabitation). 1997 legislation recognizes gay and lesbian couples as legal spouses for purposes of child custody and adoption. In 1999, the Canadian Supreme Court ruled 8-1 that where protections are provided to "spouses," they must be available to same-sex couples. While the Canadian federal and provincial governments will now have to rewrite laws to include same-sex couples, the Court did not yet address the freedom to marry itself, as that was not presented in the case. A poll subsequent to the decision found that a strong majority, 53%, of the Canadian public across provincial and demographic lines supports gay people's freedom to marry.

DENMARK (INCLUDING GREENLAND)

In 1989, Denmark became the first country to legalize the unions of same-sex couples, and has since provided a model to other Scandinavian states. By the end of 1991 about 1000 such unions had taken place, 3000 by then end of 1995. Registered Partnership, as it is called, brings many of the rights associated with marriage, including those of property, inheritance, immigration, taxation and social security. Although the ceremony creates a legal bond enforceable by law, it is not the same as marriage between men and women – gay/lesbian couples are not granted access to adoption, artificial insemination, in-vitro fertilization, or church weddings. Also one partner must be a citizen of Denmark.

FRANCE

In 1999, French lawmakers passed domestic partnership legislation that treats unmarried couples the same as married couples. The French National Assembly voted 315-249 for the Civil Solidarity Pact, first introduced in 1998 by the Socialist majority. The new measure gives unmarried couples about the same financial, property and social welfare benefits awarded married couples. Immigration, inheritance, and taxation benefits are included, but adoption rights are not. Couples began registering Jan. 1, 2000. The French government estimates the law will affect about 4.4 million unmarried heterosexual couples, but makes no guess as to the number of same-sex couples that will benefit.

HUNGARY

In an odd legal decision the Hungarian Constitutional Court legalized "common-law" gay marriage on March 8, 1995. (A couple that lives together permanently and has sex is considered married under common law). The court said a law limiting common-law marriages to "those formed between adult men and women" was unconstitutional. "It is arbitrary and contrary to human dignity ... that the law withholds recognition from couples living in an economic and emotional union simply because they are same-sex," the court wrote. The justices ordered parliament to make the changes necessary to implement common-law gay marriage in 1996. The oddity was that the court also ruled that formal, civil marriages are for heterosexual couples only. "Despite growing acceptance of homosexuality (and) changes in the traditional definition of a family, there is no reason to change the law on (civil) marriages". This ruling was the result of a legal action by the leading Hungarian gay group, Homeros. Hungary's Cohabitation law provides all marital rights to same-sex couples except for access to adoption.

HANDOUT

17

INTERNATIONAL RECOGNITION OF SAME-SEX RELATIONSHIPS (CONTINUED)

ICELAND

The Alltinget [Parliament] created a Gay rights commission that recommended in 1994 to legalize gay/lesbian marriage, criminalize discrimination against gays, and substantially increase education about gays in schools. In 1996, Iceland created a Registered Partnership based on the 1989 Danish legislation. Registered Partnership brings many of the rights associated with marriage, including those of property, inheritance, immigration, taxation and social security. Although the ceremony creates a legal bond enforceable by law, it is not the same as marriage between men and women – gay/lesbian couples were not granted access to artificial insemination, in-vitro fertilization, or church weddings. Also one partner must be a citizen of Iceland. One significant difference in the Icelandic law is that registered partners are able to adopt children, but only if biologically related to one of the partners.

NETHERLANDS

A 1995 report indicated that over 90 Dutch towns had registries for the unions of same-sex couples. Gays in some professions, including civil service, health care and education, as well as employees of the airline KLM, have been receiving spousal benefits since before that time. In 1998, the Netherlands passed the Partner Registration Act, which grants both same-sex and different sex couples most rights and duties of matrimony, except access to adoption. At the beginning of 1999, bills were introduced that would open up full civil marriage to persons of the same sex, allow adoption of children by same-sex couples, and eliminate discrimination in artificial insemination. A four-year process of Parliamentary debate is expected before the proposals become law. If they pass, the Netherlands will likely be the first nation to open marriage – not some related legal union – to same-sex couples.

NORWAY

Norway became the second country to make gay and lesbian unions legal in 1993. The legislation passed the Odelsting chamber of the Norwegian parliament by a vote of 58-40 on March 29 and the Lagting chamber by a vote of 18-16 on April 1. Registered Partnership, as it is called, brings many of the rights associated with marriage, including those of property, inheritance, immigration, taxation and social security. Although the ceremony creates a legal bond enforceable by law, it is not the same as marriage between men and women – gay/lesbian couples are not granted access to adoption, artificial insemination, in-vitro fertilization, or church weddings. Also one partner must be a citizen of Norway. A statement from the Ministry of Children and Family Affairs was released following the legislation: "Regardless of the accepted attitude towards the institution of marriage as a bearing element in society, it should be possible to regulate the practical sides of a homosexual relationship without thereby putting marriage and homosexual partnerships on an equal footing."

SOUTH AFRICA

On May 8, 1996, South Africa became the first country in the world to constitutionally prohibit discrimination based on sexual orientation. In 1997, South Africa's ruling party, the African National Congress, passed a wide-ranging resolution on gay and lesbian equality, including a call for Parliament to legalize the marriages of same-sex couples. In a related decision, a court ruled that a woman may name her female partner as a "dependent" for purposes of receiving medical aid even though that term had been defined as including only spouses. Archbishop Desmond Tutu has called discrimination against lesbians and gay men the moral equivalent of apartheid, and declared lesbian and gay equality as the world's next moral goal.

SPAIN

After decades of repression under the Franco regime, Spain's gay culture has seen a massive upsurge since the late 1970's. In 1995 it was reported that roughly 30 Spanish cities registered "civil" unions of same-sex couples, including Barcelona, Cordoba, Granada, Ibiza, Toledo and Valencia (which has a regional law). In 1998, domestic partnership legislation for both same-sex and opposite-sex couples was passed. The new law provides inheritance and pension rights, job benefits and rights for public employees. It does not, however, provide adoption rights for same-sex couples, or shared social security or immigration rights.

SWEDEN

A law legalizing the unions of same-sex couples came into effect in 1995. The law had passed quite narrowly with a parliamentary vote of 171 to 141 with 5 abstentions and 32 absences. The Swedish Prime Minister Carl Bildt was quoted as saying: "We accept homosexual love as equivalent to heterosexual. Love is an important force to personal as well as social development, and should therefore not be denied." Sweden's law is based upon earlier Danish legislation. Registered Partnership, as it is called, brings many of the rights associated with marriage, including those of property, inheritance, immigration, taxation and social security. Although the ceremony creates a legal bond enforceable by law, it is not the same as marriage between men and women – gay/lesbian couples are not granted access to adoption, artificial insemination, in-vitro fertilization, or church weddings. Also one partner must be a citizen of Sweden.

BACKGROUND READING

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By Reverend. Joseph L. Charron & Reverend. William S. Skylstad, National Conference of Catholic Bishops. This is the Roman Catholic Church's official statement on marriage of same-sex couples, which upholds the definition of marriage as the union of one man and one woman and claims that its stance does not represent an instance of unjust discrimination against homosexual people.

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By Lambda Legal Defense and Education Fund; Gay & Lesbian Advocates & Defenders; and the Gay, Lesbian and Straight Education Network. This article summarizes the 1999 decision, which makes Vermont the first U.S. state to rule that the rights of civil marriage be extended to same-sex couples. Other relevant cases/legislation are reviewed, and implications of the Vermont decision for the entire country are explored.

WHAT IS MARRIAGE FOR?

By E.J. Graff

When I was ten, I decided never to get married. I saw what had happened to my mother, and to the women in my suburban neighborhood, in the infamous 1950s marriage model. Like most of my friends during the 1980s, I expected my partner and I would live together without the intrusion of law. And besides, who in the world ever imagined two women marrying?

And so, in 1991 when Madeline and I held a commitment ceremony, I had a moment of marriage vertigo. Had I gotten married? Did I want to? What did our extra-legal ceremony – recognized by our families and friends, unrecognized by law – have to do with my mother's and my grandmother's and my great-grandmother's marriages? What, in other words, was marriage for?

Possessed by this question, I spent several years at Harvard ransacking the history of the family. There I discovered that marriage has always been a social battleground, its rules constantly shifting to fit each culture and class, each era and economy.

Let me give you some Ripley's Believe it Or Not. In the book of Genesis, Abraham and Sarah were half-siblings, sharing a father. The patriarch Jacob had his thirteen children by his two wives, the sisters Leah and Rachel, and by his concubines, Leah and Rachel's personal servants. Among the aristocratic Empire Romans, marriage was so private that a man could, and often did, divorce just by sending his wife a letter; a woman could divorce just as easily, by sending a letter or just by moving out. Divorce was so easy, in fact, that late Empire Romans in retrospect look frankly polygamous – although sequentially, not simultaneously. And yet the Romans were shocked by their conquered neighbors the Jews, who were, at the time, literally polygamous, men with several wives simultaneously. In fact, Jewish law at the time required a man whose first wife did not bear a child within ten years to marry another – with or without divorcing the first.

From those clues, it's easy to guess what those societies thought marriage was for: consolidating power, exchanging property, perpetuating the tribe. Because marriage was such an earthly, base institution, the Catholic Church for its first five hundred to a thousand years ignored marriage, considering it dirty, tainted, and secular. Once the medieval Church did start paying attention to marriage, it changed the rules dramatically, after theological battles within the Church and battles with the feudal families outside. It wasn't until the year 1215 – pretty far along into its second millennium – that the Church actually codified and wrote down its marriage rules, set up its marriage courts, and declared marriage a sacrament – the very least of the sacraments, since it involved sex, but a sacrament nonetheless.

So what? So the right-wing is flatly wrong when it says marriage has always been one single thing. Marriage is always hot political territory, constantly being redefined to fit every era's societal changes. Marriage is a kind of Jerusalem, an archaeological site on which the present is constantly building over the past, letting history's many layers twist and tilt into today's walls and floors. As with Jerusalem, many people believe theirs is the one true claim to this holy ground. But like Jerusalem, marriage has always been a battleground, owned and defined first by one group and then another. While marriage, like Jerusalem, may retain its ancient name, very little else in this city has remained the same – not its boundaries, boulevards, or daily habits – except the fact that it is inhabited by human beings.

Nevertheless, a big historical shift did have to take place for us to stop thinking marriage meant Boy+Girl=Babies and to start talking about Person + Person = Love. That change really exploded in the mid-nineteenth century. When we talk about "traditional" marriage what we should be talking about is marriage for money. The engagement feast was the moment that the two families finished negotiations and finally signed, witnessed, and notarized the marriage contract (and maybe the two started living together). The marriage ceremony was when property actually changed hands, a ceremony that was often overseen by a notary, not a priest. If your family had land, they found another family with whom to exchange it. And if you worked – if your family, like mine, came from the class of butchers, bakers, candlestick makers – marriage was your complete plan of labor. The farmer required a farmwife; the fisherman required a fishwife. The German guilds didn't allow a man to become a master and run his own business unless he had a wife – the business partner who would feed the apprentices, keep the books, and take the goods to market. As one historian wrote, "For many centuries marriage for love was the dubious privilege of those without property" – those who were near starvation, who didn't even have two dresses and a cookpot to bring to the marriage as dowry.

But a funny thing happened to marriage on the way to the 20th century. Marriage stopped being the way you exchanged those limited resources, land or labor. Today Americans are work-units as mobile as cellular phones, making a living (or failing to) by making our own decisions about which talents or inclinations to trust. And once you can make your own living, you can also make your own bed. Capitalism pushed marriage through the looking glass: now we expect people to talk about love first, and money last.

That change led to some very nasty 19th and 20th century battles over marriage's rules – battles that all lead directly to same-sex marriage. For instance, after a very nasty battle, contraception is now legal – which tells us that our society believes that marriage is justified by intimacy, not just by babies. After an even nastier battle, divorce is legal for other causes than adultery and attempted murder – which tells us that the heart is what makes and unmakes a marriage. After equally nasty battles, our societies consider men and women to be formally equal – a woman can work, a man can raise children. The way our society decided all those battles lead directly to same-sex marriage. Sex for intimacy ... marriage for love...gender equality: me and my gal.

Which is why my marriage – or the possibility of its legal recognition – is today being debated all over the West – from Hawaii to The Hague, from New South Wales to Johannesburg. Western marriage today is a home for the heart: entering, furnishing, and exiting that home is your business alone. Our society has endorsed what some of us think of as the most spiritual purpose of marriage, the refreshing of the

WHAT IS MARRIAGE FOR? (CONTINUED)

individual spirit. And if we are to respect that spirit, same-sex couples belong.

In today's debate, conservatives are dragging out the rhetoric that has been hurled against every marriage change. Allowing same-sex marriage would be like allowing married women to own property, which one 19th century New York state legislator said would "virtually destroy the moral and social efficacy of the marriage institution." Or it would be like legalizing contraception, which according to one 1930 Catholic archbishop, "is not what the God of nature and grace, in His Divine wisdom, ordained marriage to be; but the lustful indulgence of man and woman...Religion shudders at the wild orgy of atheism and immorality the situation forebodes." Or it would be like recognizing marriage between races, which one Tennessee judge said would lead directly to "the father living with his daughter, the son with his mother, the brother with his sister, in lawful wedlock" – and one of his fellows said would bring forth children who would be "sickly, effeminate, and ...inferior." Or it would be like making wives the legal equals of their husbands, a proposal that another legislator said "criticizes the Bible...degrading the holy bonds of matrimony into a mere civil contract...striking at the root of those divinely ordained principles upon which is built the superstructure of society." Or it would be like legalizing divorce, which one 19th century Yale president said would make us all "loathsome, abandoned wretches, and the offspring of Sodom and Gomorrah."

Such warnings are usually based on the idea that changing a given rule changes the very definition of marriage. And of course, they're right: define marriage as a lifetime commitment, and divorce flouts its very definition. Define marriage as a vehicle for legitimate procreation, and contraception violates that definition. Define marriage as a complete union of economic interests, and allowing women to own property divides the family into warring and immoral bits. Define marriage as a bond between one man and one woman, and same-sex marriage is absurd.

But define marriage as a commitment to live up to the rigorous demands of love, to care for each other as best as you humanly can, then all these possibilities – divorce, contraception, feminism, marriage between two women or two men – are necessary to respect the human spirit.

©E.J. Graff 1999. *Excerpted from* What Is Marriage For? The Strange Social History of Our Most Intimate Institution *(Beacon Press). Graff's book will be appear in paperback in March 2000. E.J. Graff is a journalist and writer whose work has appeared in* The New York Times, The Boston Globe, The Nation, The Village Voice, Out, *and elsewhere. She lives in the Boston Area.*

QUESTIONS FOR DISCUSSION/WRITING:

1. Graff's title asks the deceptively simple question, "What is marriage for?" How would you answer this question? Are current marriage prohibitions for same-sex couples consistent or in conflict with your answer?

2. Graff refers to the "infamous 1950s marriage model." What was this model and what were its limitations and/or benefits? Interview one or more family members who lived during this era in order to get some background information.

3. The article discusses marriage beliefs/customs from different eras and cultures. Choose one era or culture and do some research to find out more about specific marriage traditions of that time/place. What are some of the positive and negative aspects of the traditions you discovered?

4. Graff refers to the right-wing assertion that marriage is "one single thing" – the union between one man and one woman. Do you agree with this definition? Do you view marriage, as we currently know it, as an institution to be preserved, or do you feel that it should change with the times? How would changing the definition/rules impact society?

5. Graff points out that 20th century economic independence has brought heightened choice and freedom with regard to marriage. To what extent do you believe young people today are truly free when it comes to marriage? What modern pressures, constraints, and obligations operate upon individuals in today's world?

6. Contraception, divorce and gender equality are all issues that led to heated public battles and eventual changes in the rules of marriage. Choose one issue to study. What influences – positive, negative, or neutral – has this issue had on the institution of marriage?

BACKGROUND READING

WHEN JOHN AND JIM SAY "I DO"

By Charles Krauthammer, *Time Magazine*

GAY MARRIAGE IS COMING. SHOULD IT?

For the time being, marriage is defined as the union (1) of two people (2) of the opposite sex. Gay-marriage advocates claim that restriction No. 2 is discriminatory, a product of mere habit or tradition or, worse, prejudice. But what about restriction No.1? If it is blind tradition or rank prejudice to insist that those who marry be of the opposite sex, is it not blind tradition or rank prejudice to insist that those who marry be just two?

In other words, if marriage is redefined to include two men in love, on what possible principled grounds can it be denied to three men in love?

This is traditionally called the polygamy challenge, but polygamy – one man marrying more than one woman – is the wrong way to pose the question. Polygamy, with its rank inequality and female subservience, is too easy a target. It invites exploitation of and degrading competition among wives, with often baleful social and familial consequences. (For those in doubt on this question, see Genesis 26-35 on Joseph and his multi-mothered brothers.)

The question is better posed by imagining three people of the same sex in love with one another and wanting their love to be legally recognized and socially sanctioned by marriage.

Why not? Andrew Sullivan, author of *Virtually Normal: An Argument About Homosexuality*, offers this riposte to what he calls the polygamy diversion (*New Republic*, June 7): homosexuality is a "state," while polygamy is merely "an activity." Homosexuality is "morally and psychologically" superior to polygamy. Thus it deserves the state sanction of marriage, whereas polygamy does not.

But this distinction between state and activity makes no sense for same-sex love (even if you accept it for opposite-sex love). If John and Jim love each other, why then is this an expression of some kind of existential state, while if John and Jim and Jack all love each other, this is a mere activity?

And why is the impulse to join with two people "morally and psychologically inferior" to the impulse to join with one? Because, insists Sullivan, homosexuality "occupies a deeper level of human consciousness than a polygamous impulse." Interesting: This is exactly the kind of moral hierarchy among sexual practices that homosexual advocates decry as arbitrary and prejudiced.

Finding, based on little more than "almost everyone seems to accept," the moral and psychological inferiority of polygamy, Sullivan would deny the validity of polygamist marriage. Well, it happens that most Americans, finding homosexuality morally and psychologically inferior to heterosexuality, would correspondingly deny the validity of homosexual marriage. Yet when they do, the gay-marriage advocates charge bigotry and discrimination.

Or consider another restriction built into the traditional definition of marriage: that the married couple be unrelated to each other. The Kings and Queens of Europe defied this taboo, merrily marrying their cousins, with tragic genetic consequences for their offspring. For gay marriage there are no such genetic consequences. The child of a gay couple would either be adopted or the biological product of only one parent. Therefore the fundamental basis for the incest taboo disappears in gay marriage.

Do gay-marriage advocates propose to permit the marriage of, say, two brothers, or of a mother and her (adult) daughter? If not, by what reason of logic or morality?

The problem here is not the slippery slope. It is not that if society allows gay marriage, society will then allow polygamy or incest. It won't. The people won't allow polygamy or incest. Even the gay-marriage advocates won't allow it.

The point is why they won't allow it. They won't allow it because they think polygamy and incest wrong or unnatural or perhaps harmful. At bottom, because they find these practices psychologically or morally abhorrent, certainly undeserving of society's blessing.

Well, that is how most Americans feel about homosexual marriage, which constitutes the ultimate societal declaration of the moral equality of homosexuality and heterosexuality. They don't feel that way, and they don't want society to say so. They don't want their schools, for example, to teach their daughters that society is entirely indifferent to whether they marry a woman or a man. Given the choice between what Sullivan calls the virtually normal (homosexuality) and the normal, they choose for themselves, and hope for their children, the normal.

They do so because of various considerations: tradition, utility, religion, moral preference. Not good enough reasons, say the gay activists. No? Then show me yours for opposing polygamy and incest.

©1996 Time Inc. Reprinted by permission. *Charles Krauthammer won the 1987 Pulitzer Prize for distinguished commentary and was named among the top 50 most influential journalists in the National Press Corps by the* Washingtonian Magazine *in 1997. Krauthammer has written a weekly column for* The Washington Post *since 1985. He also writes essays for* Time *and the* Weekly Standard.

QUESTIONS FOR DISCUSSION/WRITING:

1. Krauthammer suggests that if marriage is redefined to include same-sex couples, there will be no "principled ground" on which to oppose polygamous unions or incestuous relationships. Does it follow that allowing one will prevent us from logically and morally disallowing the others? Are the polygamy and incest challenges valid arguments against marriage of same-sex couples?

2. In the article, Andrew Sullivan's distinction between "state" and "activity" is cited. Do you think one's sexual orientation is an internal identity or merely a behavior? Does this distinction have any bearing upon the question of whether or not to legalize the marriages of same-sex couples?

3. Krauthammer claims that most Americans "find homosexuality morally and psychologically inferior to heterosexuality" and view the marriages of same-sex couples as "wrong," "unnatural," "harmful," "psychologically or morally abhorrent," and "undeserving of society's blessing." On what basis does the author make these claims on behalf of "most Americans"? Conduct an informal survey amongst classmates, peers, family members, etc. to assess local attitudes toward lesbian, gay, bisexual, and transgender people and marriage of same-sex couples.

WHEN JOHN AND JIM SAY "I DO" (CONTINUED)

4. The author argues that most people choose a heterosexual lifestyle as the result of various considerations, including tradition, utility, religion, and moral preference.

   a) Do you think sexuality is a choice or an internal orientation? Does it matter? Should the question of choice factor into the issue at hand? If sexuality is not a choice, does that somehow validate homosexuality and laws that protect against anti-gay discrimination? If it is a choice, is it then acceptable to block inclusive practices and legislation?

   b) Do any of Krauthammer's considerations (tradition, utility, religion, and moral preference) constitute legally valid reasons for prohibiting the marriages of same-sex couples? Choose one and prepare a detailed argument for or against the unions of same-sex couples based upon this theme.

BACKGROUND READING

WHY CIVIL MARRIAGE LAWS SHOULD NOT DISCRIMINATE AGAINST LESBIANS AND GAY MEN

By Mary L. Bonauto and Evan Wolfson

A couple deeply in love wants to marry. A simple, unremarkable desire – and an impossible one, no matter how committed that couple is to a future together, if the individuals are two women or two men. Civil marriage laws discriminate against lesbian and gay couples in all 50 states.

Civil marriage is a public commitment of love and support by adult couples. It is also a basic human right. The choice of whether or not to marry is a personal decision in our society.

Gay people are moved by the same mix of personal, economic, and practical reasons for marriage as other people: marriage has social and emotional significance, with the opportunity for support of public declarations of love and commitment, and it is the sole source of important legal and economic protections that can be essential in times of crisis.

Same-sex couples already have families. They exist in every town and city across the states and many of these families include children. The marriage of two adults of the same sex who seek to make a lifetime commitment to one another takes nothing away from the marriages of anyone else. Because they cannot marry, all of these families lack the protections automatically accorded to their non-gay brothers and sisters, neighbors, friends and co-workers. The legal status of marriage cannot be duplicated through private agreements or domestic partnership.

Despite these facts, Americans have witnessed marriage discrimination time and again throughout history. In some states, African-Americans and Asian-Americans could not marry, not even each other. That was a way of saying those relationships and commitments were not worthy. *That was wrong, and we changed it.* And when African-Americans and Asian-Americans were later permitted to marry each other, in many states they still could not marry a person of the "wrong" race. Interracial marriages with white people were considered unnatural and immoral. In Virginia, this was true until 1967. *That too was wrong, and we changed it.*

In 1948, the California Supreme Court led the way in challenging racial discrimination in marriage and became the first state high court to declare unconstitutional an anti-miscegenation law (miscegenation means a mixture of races, especially marriage or cohabitation between a white person and a member of another race). Just 30 years ago, the United States Supreme Court struck down the remaining interracial marriage laws across the country, and declared that the "freedom to marry" belongs to all Americans (Loving v. Virginia, 1967).

For many years of our country's history, women essentially became the property of their husbands upon marriage, and lost rights, including the right to contract and own property in their own names. *That was wrong and we changed it.*

There were also times in this country when legal battles raged between states, and between states and their citizens about whether divorces obtained in sister states were legally valid. It was not until 1942, when the United States Supreme Court realized the chaos that resulted when people did not know if they were still married or not as they moved from state to state, that it ruled states must accord "full faith and credit" to the divorces of sister states (Williams v. North Carolina, 1942).

Over time, restrictions on marriage have become more and more suspect. In 1987, the last time the United States Supreme Court considered the claim of a group of Americans about restrictions on their right to marry, the court articulated four attributes of marriage common to this group and all other Americans: (1) expression of emotional support and public commitment; (2) spiritual significance, and for some the exercise of a religious faith; (3) the expectation that for most, the marriage will be consummated; and (4) the receipt of tangible benefits, including government benefits and property rights. Looking at these attributes of marriage, the court declared that these Americans-incarcerated prisoners-shared with other Americans the freedom to marry. The legal features of marriage, the court held, invalidated Missouri's ban on marriages of prison inmates (Turner v. Safley, 1987).

Though incarcerated prisoners in the United States enjoy the right to civil marriage, this opportunity remains blocked for law abiding same-sex couples in all 50 states, making lesbian, gay, bisexual, and transgender citizens particularly vulnerable to legal, economic and social sanctions.

Marriage provides a gateway to hundreds of protections, responsibilities, and benefits established by the state. Only marriage ensures Social Security, Medicare, and veterans benefits for a spouse. Only marriage automatically grants the right to make emergency medical decisions for a spouse and access to hospital emergency and intensive care units. Only marriage assures the right to choose a final resting place for a deceased spouse, take bereavement leave, and inherit automatically in the absence of a will. Child custody frequently is denied for gay parents simply because they are not married. Only marriage brings responsibilities and protections such as with divorce and child support requirements. There are hundreds of legal rights and responsibilities that civil marriage affords. Among these are the rights to:

- share such government benefits as Social Security and Medicare
- file joint tax returns and get special marriage or family rates or exemptions
- have joint parenting, adoption, foster care, custody, and visitation
- obtain joint insurance policies for home and auto, as well as family health coverage
- inherit automatically in the absence of a will
- secure equitable division of property and determine child custody and support in case of divorce
- obtain veterans' discounts on medical care, education, and housing loans
- enter jointly into rental leases with automatic renewal rights
- make medical decisions on a partner's behalf in the event of illness

WHY CIVIL MARRIAGE LAWS SHOULD NOT DISCRIMINATE AGAINST LESBIANS AND GAY MEN (CONTINUED)

- choose a final resting place for a deceased partner
- take bereavement or sick leave to care for partner or child
- receive spousal exemptions to property tax increases upon the death of a partner
- obtain wrongful death benefits for a surviving partner and children
- apply for immigration and residency for partners from other countries
- obtain domestic violence protection orders
- visit a partner or child in the hospital, and other public institutions

These are just some of the hundreds of legal rights and responsibilities that come with civil marriage. Most of these protections cannot be privately arranged or contracted through other means, even for those who can afford a lawyer. Furthermore, private employers, banks, and other businesses often extend important benefits and privileges – such as special rates or memberships – to married couples only. Denying equal marriage rights not only deprives same-sex couples of essential legal and economic protections, it also deprives them of the social and emotional significance that marriage holds for many. It is time, once again, for Americans to recognize that *current marriage law is wrong, and to change it.*

Mary Bonauto is the Civil Rights Project Director of Gay & Lesbian Advocates & Defenders (GLAD) and has litigated in every area of rights for GLBT people since 1990.

Evan Wolfson is senior staff attorney and Marriage Project director for Lambda Legal Defense and Education Fund, and adjunct professor of law at Columbia University. He has worked on the full range of sexual orientation and AIDS/HIV legal and public policy issues for Lambda since 1989.

QUESTIONS FOR DISCUSSION/WRITING:

1. Bonauto and Wolfson assert that marriage prohibitions are discriminatory. Do you think that legally defining marriage as the union of one man and one woman is an example of discrimination? Why or why not?

2. The authors also describe marriage as a personal choice and a basic human right. Is marriage a right to which *all* people are entitled, including lesbian, gay, bisexual, and transgender people? Should the government have the right to regulate marriage, or should the decision to marry be a completely personal decision?

3. Why would a same-sex couple – or any couple for that matter – choose to marry? What are the benefits of civil marriage? Describe some scenarios in which people denied the right to marry would be at a disadvantage.

4. The article discusses several cases dealing with marriage restrictions. Choose one of the following cases to research, and be prepared to discuss the facts of the case as well your opinion with regard to the verdict: Perez v. Lippold (1948), Loving v. Virginia (1967), Williams v. North Carolina (1942), Turner v. Safley (1987).

5. What do current marriage prohibitions for same-sex couples have in common with historical marriage restrictions based on race? How are they different? What understandings from historic cases can be applied to the modern day marriage debate?

BRAVE NEW MARRIAGE: NOTHING BUT A CONTRACT?

By Chuck Colson

The greeting card companies may have to come up with a new kind of Valentine's Day card next year: one that celebrates, not the joys of married love, but of economic unions. Hawaii's high court is poised to take all the romance out of marriage and redefine it as just another legal contract.

In a recent article in the *National Review*, law professor Gerard Bradley writes that for months, conservatives have feared that Hawaii's high court would foist "gay marriage" on the state. In reality, Bradley said, what's happening in Hawaii is far more radical than gay marriage.

When most people talk of marriage, Bradley says, they mean the historical definition: the sexual union of a man and a woman, which requires both sexual complementarity and consummation. When the Hawaiian government refused to allow a lesbian couple to marry, it argued that its decision had nothing to do with discrimination; it had to do with the fact that same-sex partners are physically incapable of marriage.

The logic is impeccable – to anyone but a Hawaii Supreme Court justice, that is. In Baehr v. Miike, the court said marriage is "a state-conferred legal status," and then listed 14 specific benefits to marriage, 12 of them economic. As Bradley put it, the judges' idea of marriage is sexless and almost all about money. It's immaterial whether a same-sex couple is gay or not, because marriage is no longer about sex: it's about government benefits. It's an abolishment of true marriage.

Bradley's article exposes a new strategy in the movement to legalize gay marriage. I suspect gay rights leaders began to realize how difficult it would be to argue that homosexuality is equivalent to heterosexuality, because they'd be up against the weight of 3,500 years of considered moral determinations of every civilized society. Instead, gays have decided to try to change the very *definition* of marriage to simply a contractual agreement between two people – *any* two people.

The problem, of course, is that this definition flies smack in the teeth of the biblical definition of marriage. Christian tradition treats marriage as a covenant, or a sacrament. It's a man and woman covenanting before God to become one flesh and to perpetuate the human race. That's the reason society has set marriage apart and given it certain sanctions and privileges in the law.

But if government were to say that marriage is simply a contract for sharing economic benefits, it would unravel the most basic structure of society. It strikes at the heart of what a civilized society is – and that is deadly dangerous.

You and I have to help our friends, neighbors, and church groups understand this new attack on traditional marriage. And we have to help our churches reinstate the idea of marriage as a holy union.

Otherwise, we will see the end of true marriage in America – and marriage vows will have all the romance of zoning laws.

Chuck Colson is the Chairman of the Board of Prison Fellowship Ministries. A syndicated columnist and author of 15 books, he broadcasts daily on the nationally syndicated radio show, BreakPoint.

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QUESTIONS FOR DISCUSSION/WRITING:

1. Colson charges the campaign to legitimize marriage of same-sex couples with pushing legal/economic definitions to the exclusion of romantic and spiritual meanings.

   a) Are notions of marriage as "married love" and "economic union" mutually exclusive? Does an emphasis on the contractual nature of marriage negate the significance of the institution as a celebration of committed love?

   b) Do you agree that "gays have decided to try to change the very *definition* of marriage to simply a contractual agreement between two people...?" Do you feel that lesbian, gay, bisexual, and transgender couples who wish to marry are primarily interested in economic/legal benefits, or do you feel that their motivations for marrying reflect the very same romantic desires that drive the majority of heterosexual couples to marry?

2. The author cites law professor Gerard Bradley's "historical definition" of marriage as "the sexual union of a man and woman, which requires both sexual complementarity and consummation." This definition is offered to support the notion that "same-sex partners are physically incapable of marriage." Do you think that this historical definition should be upheld within the context of modern society? Should "sexual complementarity" and "consummation" be the criteria by which we judge a couple's fitness for marriage?

3. Colson claims that "3,500 years of considered moral determinations of every civilized society" support the idea that homosexuality is inferior to heterosexuality. Is this so? Research a civilization in which expressions of same-sex love were common and report on the attitudes toward homosexuality in this society. Ancient Greece and pre-Nazi Germany are two examples of such societies. *People With A History* at http://www.fordham.edu/halsall/pwh/ is one source of information on this topic.

4. The author states that marriage of same-sex couples "strikes at the heart of what a civilized society is – and that is deadly dangerous." In your opinion, what are the primary features of a "civilized" society? Do you think that marriage of same-sex couples is a threat to this civility or poses real danger to society? Why or why not?

WE CAN CHANGE

By Joan Countryman

In the summer of '62 I was a civil rights activist, a college graduate, 22 years old and in love with Peter Countryman. Peter, a 20 year old Yale junior, had dropped out of school to organize the Northern Student Movement, a response of New England and Eastern college students to the Southern sit-in movement. We were living in Philadelphia that summer, directing a tutoring project for low-income black high school students and hoping to change the world.

Getting married was what people we knew did, but when we decided to marry that summer, over the objections of his parents and the reluctant support of mine, there was a problem. State laws govern marriage in the United States, and license requirements, we learned, put us in an awkward position. In Pennsylvania, and most northern States, to marry without your parents' permission you had to be 21 or older. Peter's parents would not give their consent.

Age was not a problem in the South, but race was, and every state south of the Mason-Dixon line had strict laws against *miscegenation*: "marriage between a white person and a person of another race." For Peter, a Chicago-born, white, movement activist, and for me, a black woman raised in an integrated, Quaker community, the obstacle was little more than an annoyance and an irritant. After all, we had set out to bring radical change in the society, so being an interracial couple and getting married in the face of racist laws were simply part of the struggle. Taking time to challenge those laws was not high on our agenda, however, for we were impatient to get on with our lives.

We eloped, to Michigan, one of the few states that presented no barriers, and were married in Ann Arbor with the help of friends who were graduate students at the University of Michigan. It was not the Quaker wedding I had imagined I might have, but embraced by the student movement and its vision of a "beloved community" I felt we had done the best we could in the circumstances. Within five years of our marriage, the United States Supreme Court had agreed to hear the case of Mildred and Richard Loving, the couple who had been convicted of violating Virginia law by marrying and living together. The Lovings argued that they had been denied constitutional rights to equal protection under the law and the fundamental right to marry. The Court agreed, and soon thereafter, miscegenation laws began to disappear across the country.

At the time that Peter and I were struggling to get married, Dean Smith, coach of varsity basketball at the University of North Carolina, was confronting segregation in his community: putting black players on University teams and, with the support of the pastor of his church, welcoming black students to worship at Sunday services. Describing that period in a recent interview, Smith said that he wishes that he had done more. "I should have visited every segregated high school in the state," he said, "recruiting and challenging players to come to UNC. He also credits church leaders with urging him to take desegregation as his responsibility.

Acknowledging that the stance of his congregation was rare among Southern Baptists, nevertheless Smith sees this as a responsibility of a church that holds that we are equal in the sight of God. He also speaks with pride of the congregation's support for same-sex marriage, linking homophobia and racism as social ills that we have a duty to resist and confront. Listening to the interview I found myself admiring the clarity of Coach Smith's vision, and imagining that one day gay couples might look back on the denial of their right to state sanctioned marriage as only part of history, an unfortunate pattern of discrimination long since abandoned. It is not too much to expect or hope for; we can change.

Joan Countryman is head of Lincoln School in Providence, Rhode Island, a Quaker school for girls in pre-kindergarten through 12th grade. She has served on the national board of the Gay, Lesbian and Straight Education Network (GLSEN).

QUESTIONS FOR DISCUSSION/WRITING:

1. The landmark *Loving v. Virginia* case (1967) ended all anti-miscegenation laws in the United States. Conduct some in-depth research and be prepared to discuss the facts of the case in class. How did the courts and/or individual states dismantle interracial marriage bans? What challenges remained for interracial couples even after the bans were repealed?

2. Countryman describes a basketball coach who confronted segregation by putting Black players on his university team. What types of prejudice exist in your school setting today? What steps might you take to educate others and reverse this prejudice?

3. Countryman links homophobia and racism as social ills that must be resisted and confronted. How do homophobia, racism, and other forms of prejudice intersect? Audre Lorde wrote an article entitled *There is No Hierarchy of Oppressions* (Interracial Books for Children, vol. 14, no. 3&4, 1983, p.9). What message do you think she is trying to impart through this title? If possible, read the article and respond to it in class.

4. The author envisions a future in which "gay couples might look back on the denial of their right to state sanctioned marriage as only part of history, an unfortunate pattern of discrimination long since abandoned." Do you think this will ever become a reality? Write a brief, descriptive piece in which you envision a future society's attitude toward/treatment of its lesbian, gay, bisexual, and transgender citizens.

KIDS WITH GAY PARENTS

By Joseph P. Shapiro with Stephen Gregory
U.S. News and World Report

AS LAWMAKERS BATTLE GAY MARRIAGES, A LOOK AT HOW THE CHILDREN FARE

Alex Tinker knows what people say about kids like him, kids with gay or lesbian parents: You'll probably turn gay yourself. Your life is going to be a mess. But the 13-year-old is doing just fine as he steps onto the stage along with 260 other Oregon seventh graders being honored for scoring higher on the Scholastic Assessment Test than most high school seniors. As the students' names are called, Alex stands on a chair and points happily to his two proud moms. "Not to brag or anything," he says later, "but if you compared me with an average kid in a normal household, I probably get better grades; I'm probably more athletic; I'm probably equally mentally healthy."

At the heart of the debate over legalizing same-sex marriage lies the well-being of children like Alex. The Senate is expected to vote this week on the "Defense of Marriage Act" that would allow states to refuse to recognize gay marriages even if they are legal elsewhere--a measure adopted by the House and supported by President Clinton. Gay marriages may soon be sanctioned by Hawaiian courts, and 15 states already have adopted statutes barring recognition of gay unions. Critics argue gay marriages would devalue the institution of marriage and give special rights to homosexuals. But their bottom-line objection is that lesbians and gay men cannot be fit parents. Says Robert Maginnis of the Family Research Council: "Both a mom and dad are essential to a balanced upbringing."

Yet many thousands of homosexuals already are living in virtual marriages and parenting children. There are no good estimates of the number of children of gays and lesbians, but researchers are discovering that most children of homosexual parents share Alex Tinker's confident self-assessment. According to a recent American Psychological Association survey of more than 40 research studies on gay parenting, such children are likely to be just as well adjusted as the progeny of traditional unions. The samples in many surveys are small, but the studies show that the children play with the same guns and dolls as do other boys and girls, have similar IQs, develop typical friendships, have a normal sense of well-being and are no more likely to be confused about their sexual identity than kids with straight parents.

What does have an impact on the lives of children whose parents are homosexual is society's reaction. Many are as closeted as their parents. Sons and daughters of gay parents met in July at the sixth annual meeting of the Children of Lesbians and Gays Everywhere (COLAGE), a 2,000-member support and education group. The most popular seminar: knowing whom and when to tell Mom or Dad is gay. At last year's conference in Los Angeles, Maya Jaffe met a classmate from her Maryland high school. Neither knew the other had a gay parent.

In past generations, the children of homosexual parents were likely to be the product of a heterosexual marriage. Typically, the mother or father later came out as gay and the parents divorced. Today, there's a second wave of children of gay parents, many of whom are adopted or who are the natural sons and daughters of lesbian moms.

Special delivery. Visiting Alex Tinker's family is like taking an archaeological dig through the layers of such families. Alex, a likable, straight-A student, is the youngest of three siblings living with Bonnie Tinker and her partner of 19 years, Sara Graham. Alex knows that his family is unusual, to say nothing about his conception. In 1982, a family friend bicycled an oyster jar of his own sperm over to Bonnie's house. She administered the insemination herself. Alex considers Bonnie and Sara his parents. But the father occasionally takes Alex--along with his own children--hiking or bicycling.

Though the circumstances of his life may seem complicated to outsiders, to Alex they're rather ordinary. Alex loves basketball, watergun fights and, he notes, most everything typical to any 13-year-old boy. While he has been selective in whom he tells about his family, he reports only rare cases of teasing. "I don't think there's anything wrong with being raised differently," he says.

Growing up was more difficult for Alex's older step-siblings. Josh, 28, is Sara's son from an earlier marriage. And Connie, 25, was the legal ward of Bonnie's previous lesbian partner. Josh and Connie's generation had more problems, notes University of Virginia psychology professor Charlotte Patterson, because they "were the pioneers" when homosexuality was less accepted.

It can be an especially hard adjustment for kids who start out living in what they think is a typical heterosexual family to discover suddenly that Mom or Dad is gay. That's similar to what happened to Josh. His father died when he was 10. A few years later, he was sharing his Portland home, a converted blacksmith's shop that his late father had remodeled, with his mother and her new partner, Bonnie, who worked at a battered-women's shelter, and Connie. Josh kept his lesbian mother's existence a secret from his friends; Bonnie avoided parent-teacher conferences and Josh's sports events to protect him. "I couldn't understand it. It was out of the norm," Josh says now. "They weren't my family. Basically, I just hated them."

No visitation? A recent brush with what the family considers homophobia made them closer. Josh says his marriage fell apart over his wife's discomfort with her lesbian in-laws. Josh's wife, the first person he ever told about his gay mother, demanded that there be no contact between their baby daughter and her gay grandmothers. After the divorce, his ex-wife went to court in an unsuccessful attempt to prohibit her daughter from visiting Josh at Sara and Bonnie's house last Christmas. The rancorous battle over visitation "opened my eyes up," says Josh, to the prejudice his mother faced. "I'm older now and more mature," he says. "I don't look at people for their sexual orientation. My mom's lifestyle is her lifestyle. You have to respect that." As for his mother's partner and his step-siblings: "I consider them family now. I'd do anything for them."

Among the toughest and most universal unpleasantries kids in these families face is teasing from classmates. Kate Asmus lost track of the many confrontations with taunting West Hartford, Conn., classmates, which left her burning with tears or anger while the school janitor scrubbed **KATE'S A LESBO, YOUR MOMS RECRUIT** and other graffiti from her locker. Once Kate, then in the eighth grade, ignored the slurs, the harassment stopped. One study found that virtually all children of gay parents

report being subjected to unwanted teasing but that nearly all children of traditional families report being bothered by teasing at some time as well.

Despite such occasional ugliness, perhaps most striking about the children of gay parents is how little they say having a homosexual parent truly upsets their lives. "I've never lost a friend because my dad is gay," says Nathaniel Selig, 18. Even his girlfriend, Tara Kelley, and her politically conservative parents are OK about it. Tara's mother, an interior decorator, has worked with gay men.

The rhythm of their lives, such teens say, is like that of any of their peers. Asmus, now 18 and starting a college filmmaking program, notes that her two lesbian mothers "make me do my homework, give me the car when I need it, complain about bills" – just like her friends' parents. "They are my Cleavers; they're my Ward and June," she says. For Nathaniel Selig, the key is that father John Selig is Dad first: "He's not my *gay* dad. He's my dad." Still, father and son tastes are distinct in the cluttered apartment they shared until Nathaniel recently left for college: It was filled with Nathaniel's soccer trophies and Dallas Cowboys memorabilia and John's gay-pride paraphernalia, rainbow flags and streamers. As for his own sexuality, Nathaniel, who proudly declares his virginity, says: "I don't think I could be taught to love a guy the way that I could love a girl. It's just not me."

Sketchy studies. No issue is more controversial than whether gay parents produce gay children. Northwestern University psychology professor Michael Bailey, who has studied the genetics of homosexuality, says that the sketchy studies that do exist "are finding rates on the order of 10 percent of the offspring" of gay parents who turn out gay themselves, higher than the "generally accepted range between 1 and 4 percent" of the population that gays constitute.

But just because gay parents have a higher percentage of gay offspring doesn't mean that their parenting styles are responsible. If homosexuality is largely genetic – as Bailey's own groundbreaking studies of twins suggest – then it makes sense that homosexuality would run in families. Alex Tinker has an aunt, one of Bonnie's sisters, who is also a lesbian. And if being gay is at times a choice – as some homosexuals say – then it also is logical that kids with positive gay role models would be more likely to see homosexuality as an OK choice. After years of bad relationships with men – "they're bossy and controlling" – Connie Tinker started dating women. Her lesbian mothers, however, always had encouraged her dating of men.

For gay parents, having a gay child can be jarring – since it plays into antigay arguments that they "proselytize" their homosexuality. Dan Cherubin knows. He founded Second Generation, a support group for the gay children of gay parents. Cherubin was shocked when, marching in New York's gay-pride parades, his group was greeted with chilliness and even hostility by other gay marchers.

Several studies suggest offspring of gays and lesbians are rarely confused about their own sexual identity. If anything, says Maya Jaffe, 17, having a gay parent may make teens even more secure about their heterosexuality. "I'm more sure about my sexuality than my friends," says Jaffe, who lives with her two moms in Rockville, Md., "because I know it would be OK if I am a lesbian. But I'm not."

And having gay parents also may foster empathy and tolerance. That is clear from Jaffe's eclectic mix of friends, which includes mostly straight kids but also gay ones (one boy came out to her before telling anyone else he is gay), and friends across race and class lines.

One specter, however, haunts some children of homosexuals: AIDS. For Stefan Lynch, 24, watching his father die five years ago was particularly lonely. The father talked about it little, already feeling guilty about "abandoning me when I was a teenager," recalls Lynch. And Lynch, now director of COLAGE, hid his own hard times at school from his dad, feeling "he had enough on his shoulders." In some families, AIDS strikes more than once. Breauna Dixon, 7, wrote a picture book about her father's death that is used in AIDS support groups. Breauna now lives with her father's partner – who became her guardian – and the man's new live-in partner (her third "dad"), who has HIV.

Custody decisions for Breauna would have been easier if her dads could have married. Many gay couples find that, without the sanction of law, they spend thousands of dollars for lawyers to draft papers that make clear who can make life-and-death guardianship decisions for their children. Often gay couples will keep multiple sets of these papers – at home, in the car or with them at all times – in case of emergency.

For Connie Tinker, there was a cost to such uncertain legal status. Connie's mother, Bonnie, is a lesbian activist in Oregon – but it wasn't always that way. It was Bonnie's former partner who was Connie's legal guardian. And although Bonnie has reared Connie from the time her daughter was an infant, Bonnie at first kept her own name off the guardianship papers. Bonnie, who now runs a gay-parenting network, feared Connie would be put into foster care if social workers discovered she had lesbian parents. (Courts often deny custody to gay parents. Last month, a Florida court upheld the transfer of 12-year-old Cassie Ward from her lesbian mother to her father, despite the fact that he had served eight years in prison for killing his first wife.) Once, when Connie was 7, police took her into custody, mistaking her for a 13-year-old they wanted to arrest. Despite her terror and anger, Bonnie felt she could not complain. Not until Connie turned 18 – and it was no longer a judge's decision – did Bonnie formally adopt her.

Because of such problems, Connie's mothers say they would welcome the chance to get a marriage license at city hall. But even if Bonnie and Sara one day marry, their youngest son, Alex Tinker, doubts it would change his life. His moms are already in what, to him, feels like marriage and family. "It's kind of like finding a new species of life," says Alex, who hopes to go to MIT to study engineering. "It's always existed before, but now it's in the books."

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KIDS WITH GAY PARENTS (CONTINUED)

QUESTIONS FOR DISCUSSION/WRITING:

1. Some people feel that children raised by same-sex parents will become gay themselves. Do you think children in such families are more likely to be gay, lesbian, or bisexual? Why or why not? Do you think nature, nurture, or a combination of the two determines one's sexual orientation?

2. Critics argue that legalizing the marriages of same-sex couples would constitute special rights for gay, lesbian, and bisexual people. What do you think – are marriage rights *special* rights or *equal* rights? What evidence can you offer to support your position?

3. Robert Maginnis of the Family Research Council is quoted as saying that "Both a mom and a dad are *essential* to a balanced upbringing." Do you agree with this statement? Is it essential for children to have both? Do you think that children who are raised in same-sex headed or single-parent families are at a disadvantage? What factors do you feel are most *essential* for a *balanced upbringing*?

4. Shapiro discusses the impact of teasing and societal disapproval on children whose parents are gay, lesbian, or bisexual. Is this a reason to discourage same-sex couples from having children? Or would efforts be better spent trying to reduce anti-gay sentiment amongst community members?

5. Amongst the countries that have given some kind of formal status to same-sex couples, most have not extended adoption rights to these couples, and some also put restrictions on insemination practices. Do you agree with government regulations that restrict the ability of same-sex couples to raise children, or do you feel such opportunities should be open to all couples regardless of sexual orientation?

MARRYING DAVID: TRADITIONS AND SPIRITUAL ACTIVISM

By The Reverend Pressley Sutherland

It was October 13, 1997. David and I could hear the choir singing, "Oh, Happy Day," as we waited to process into the chapel. Inside, over 200 of our friends and family had gathered to celebrate our wedding. As we walked hand-in-hand through their beaming faces, the love we felt was not only for the two of us, but for all of us who have had the courage to stand and say, "Our love matters."

After being together for five years, David and I decided to honor our relationship in a spiritual ceremony. Both of us felt that our commitment to each other was a sacred trust. So, it seemed only natural to speak our vows in church. Our wedding allowed us and our friends the chance to share a blessing and promise to support each other in the years to come. Two years later, we are still glad we did it, and still committed to fighting for legal recognition.

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Dave and I consider ourselves card-carrying queers. By that, I mean we are committed to re-imagining and redefining the power dynamics surrounding gender, sexual orientation, and family. We see our marriage as spiritual activism on behalf of equality. For centuries, marriage favored one partner over another, usually husbands over wives. Sharing life with another person as an equal partner is a recent idea, in terms of marriage. As such, many queer people rightly ask, "Is this an institution in which we can participate with integrity?" If legal marriage today is based on equal partnering, I believe we can.

As a people often denied the right to marry, we have done what all oppressed people do – we've found ways of being married anyway! History is full of stories of queer people passing as 'sisters, 'brothers', 'roommates,' or 'longtime companions' in order to spend their lives together. And a big part of this history is the tale of same-gender and transgender people sharing lives in ways that rejected the inequality of traditional male-female marriage. (Ever hear of 'Boston Marriages?' Look it up!) In celebrating our relationships openly today, we honor the tenacity, strength, and wisdom of those who came before us, and inherit a tradition of marriage based on equality, mutual respect and spiritual connection.

One of the more interesting ideas being kicked around is that the recognition of same-gender marriage is something new. For a contrast, check out the work of historian John Boswell. In his book, *Same Sex Unions in Premodern Europe*, he includes copies of same-gender union ceremonies performed in the early Church. A quick overview provided in chapter 1 of *Same-Sex Marriage: Pro and Con*, edited by Andrew Sullivan, dispels the notion that societies have never accepted our marriages publicly. From Greece to China to West Africa to First American Peoples, we were a public part of many moral societies.

In Jewish and Christian traditions, words from the book of Ruth are often read at male-female weddings – but they are promises of lifelong love between two women: Ruth said to Naomi, "Do not urge me to leave you or to turn back from you. Where you go I will go, and where you stay I will stay. Your people will be my people and your God my God. Where you die I will die, and there I will be buried. may God do thus and so to me if even death separates me from you." (Ruth 1.16-18)

Uniting lives is a spiritual matter, and same-gender people have traditions as old as any of our religions. Spirituality is about learning who we are and how we connect with that which is beyond ourselves. Love teaches us both. Marriage is one of many spiritual journeys we can take. It may not be the path for everyone, but it is important for many of us.

Laws should reflect the real lives of real people, not fantasies about people based on prejudices. In the debate over legalizing same-gender marriage, queer people are often viewed as a suspect group. Some may ask, "Are queer people capable of keeping commitments and creating families?" To these people I say, "Open your eyes to what is going on spiritually in our lives." We have survived and thrived against all odds, and fought hard-won battles for dignity, integrity, and the right to care for our partners and families. Spiritually, we have been marrying for centuries. Now it is time to tell the truth legally.

Legalizing same-gender marriage is a spiritual issue. How else can we live out our sacred promise to be there for each other? Behind every beautiful vow we share is the reality of little legal access and recognition. A wedding blessing is a mandate, not a guarantee. At home and in the courts, it is up to us to make these promises real:

"with this ring
I pledge you my love.
I promise to be faithful to you
In sickness and in health,
In good times and in bad.
I promise to be your family
And to be your home
All the days of our lives."
What God has joined together,
let no one put asunder.

Rev. Pressley Sutherland is the Assistant Pastor for Congregational Life at Metropolitan Community Church of New York, one of the world's oldest and most vibrant lesbian/gay/bisexual/transgender congregations. He is a graduate of Union Theological Seminary in the City of New York.

QUESTIONS FOR DISCUSSION/WRITING:

1. Sutherland and his husband participated in a spiritual marriage ceremony. How do you feel about communities of faith performing marriages for same-sex couples when such unions are not sanctioned by the state? How do you feel about individual congregations performing ceremonies that go against the laws of the larger church or religious governing body (e.g., an individual Catholic Priest conducting a ceremony in defiance of the larger Catholic Church)?

2. Sutherland defines the uniting of lives as a spiritual matter. Do you think marriage is a spiritual contract, a civil contract, or another matter altogether? If marriage is a spiritual journey, should civil laws be changed to reflect the spiritual realities of citizens?

3. The author asserts that his marriage is a form of spiritual *activism*. What does activism mean to you? In what ways can his marriage be seen as

MARRYING DAVID: TRADITIONS AND SPIRITUAL ACTIVISM (CONTINUED)

activism? In what ways do you think ceremonies like this impact the people and communities to whom the couples are connected?

4. Sutherland points out that opponents claim the recognition of marriage of same-sex couples is something new, but that in actuality these unions have been recognized throughout history. Check out the book Sutherland cites – *Same-Sex Unions in Premodern Europe* by John Boswell. Find at least one example of a time/place in which the unions of same-sex couples were a public part of society. Hand in a written description or be prepared to discuss it in class.

STATEMENT ON SAME-SEX MARRIAGE

By Most Reverend Joseph L. Charron & Most Reverend William S. Skylstad for the National Conference of Catholic Bishops, July 1996

The Roman Catholic Church believes that marriage is a faithful, exclusive, and lifelong union between one man and woman, joined as husband and wife in an intimate partnership of life and love. This union was established by God with its own proper laws. By reason of its very nature, therefore, marriage exists for the mutual love and support of the spouses and for the procreation and education of children. These two purposes, the unitive and the procreative, are equal and inseparable. The institution of marriage has a very important relationship to the continuation of the human race, to the total development of the human person, and to the dignity, stability, peace, and prosperity of the family and of society.

Furthermore, we believe the natural institution of marriage has been blessed and elevated by Christ to the dignity of a sacrament. This means that Christian marriage is more than a contract. Because they are married in the Lord, the spouses acquire a special relationship to each other and to society. Their love becomes a living image of the manner in which the Lord personally loves his people and is united with them. Living a Christian sacramental marriage becomes their fundamental way of attaining salvation.

Because the marital relationship offers benefits, unlike any other, to persons, to society, and to the church, we wish to make it clear that the institution of marriage, as the union of one man and one woman, must be preserved, protected, and promoted in both private and public realms. At a time when family life is under significant stress, the principled defense of marriage is an urgent necessity for the well-being of children and families, and for the common good of society.

Thus, we oppose attempts to grant the legal status of marriage to a relationship between persons of the same sex. No same-sex union can realize the unique and full potential which the marital relationship expresses. For this reason, our opposition to "same-sex marriage" is not an instance of unjust discrimination or animosity toward homosexual persons. In fact, the Catholic Church teaches emphatically that individuals and society must respect the basic human dignity of all persons, including those with a homosexual orientation. Homosexual persons have a right to and deserve our respect, compassion, understanding, and defense against bigotry, attacks, and abuse.

We therefore urge Catholics and all our fellow citizens to commit themselves both to upholding the human dignity of every person and to upholding the distinct and irreplaceable community of marriage.

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QUESTIONS FOR DISCUSSION/WRITING:

1. According to this statement, marriage serves the two inseparable purposes of union and procreation.

   a) Do you agree that these are the primary functions of marriage? Why or why not?

   b) Considering the opportunities in modern society for adoption, artificial insemination, and other alternative forms of creating families, do you think it is possible for all couples – including same-sex couples – to fulfill the purposes of marriage as laid out by the church?

2. The statement highlights the benefits that the marital relationship offers "to persons, to society, and to the Church."

   a) If the marriages of same-sex couples were legalized, would this somehow threaten the attainment of these benefits by others? Why or why not?

   b) Do you think it is just to exclude a segment of the population from these extolled benefits based upon sex/sexual orientation?

3. The statement asserts that limiting marriage to heterosexual couples is an "urgent necessity for the well-being of children and families, and for the common good of society." Do you agree or disagree? Support your response with specific reasons.

4. According to this proclamation, opposition to marriage of same-sex couples is not an instance of discrimination because such unions cannot realize the full potential of the marital relationship. Do you feel that same-sex couples have the capacity to fulfill the promise of marriage? Why or why not? Do you think banning marriage of same-sex couples is discriminatory or not? Why?

5. Do you feel that the stance of the Catholic Church – or any other religious institution either for or against the marriage of same-sex couples – should have any bearing upon a state's decision to allow or disallow the unions of same-sex couples? Why?

THE VERMONT DECISION: CONTEXT AND IMPLICATIONS

By Lambda Legal Defense and Education Fund; Gay & Lesbian Advocates & Defenders; and the Gay, Lesbian and Straight Education Network

In a landmark decision, the Vermont Supreme Court ruled on December 20, 1999 in favor of three same-sex couples who challenged the constitutionality of Vermont's marriage laws. Writing for the court, Justice Amestoy declared,

"The extension of the common benefits clause to acknowledge plaintiffs as Vermonters who seek nothing more, nor less, than legal protection and security for their avowed commitment to an intimate and lasting human relationship is simply, when all is said and done, a recognition of our common humanity."

The court concluded that the benefits and protections of marriage must be extended to same-sex couples. The court directed the legislature to remedy the discrimination, making Vermont the first state in the union to extend the legal rights of marriage to same-sex couples.

The verdict of the Vermont Supreme Court has sparked much debate and raised many questions across the nation. The following provides some background with regard to the historic decision and a discussion of the impact that the court's judgment is likely to have on the United States.

What exactly was the Vermont case about? In July 1997, three plaintiff couples sued the Vermont state health department for denying them marriage licenses. The case, known as Baker v. Vermont, was reluctantly dismissed in December 1997 by a trial court that found many of the state's justifications for marriage discrimination "invalid." The court found that the state was justified in using marriage to promote procreation, despite the fact that marriage licenses are still issued to couples who cannot or do not procreate. The plaintiffs appealed to the Vermont Supreme Court. During argument before the Court in November 1998, some justices appeared skeptical about the procreation defense. Another justice, skeptical of the government's concern that no state has yet to extend the freedom to marry to lesbian and gay couples, remarked, "Doesn't someone have to be first?" The Vermont Supreme Court answered this question with a resounding "yes" on December 20, 1999 by boldly ruling that the state constitution's common benefits clause prohibits that state government from conferring a whole range of benefits and protections through marriage, but excluding some people based on the sex of her or his partner. The state must now provide to lesbian and gay couples all the benefits and protections accorded to non-gay couples through marriage. The state legislature will determine whether such benefits will come through formal marriage or a separate but equal system of domestic partnerships.

What are other significant cases and legislation related to marriage of same-sex couples?

Baehr v. Anderson (Hawaii):
The Vermont ruling comes 11 days after the Hawaii Supreme Court stopped short of recognizing the freedom to marry of lesbians and gay men in *Baehr v. Anderson*, the case credited with sparking the national discussion about marriage of same-sex couples. As in Vermont, the Hawaii case began when three same-sex couples were denied a marriage license. In 1993, the Hawaii Supreme Court ruled that the state's marriage policy violated the state Constitution's prohibition against sex-based discrimination, and ordered a trial for the Health Department to produce a compelling state interest in limiting marriage licenses only to mixed-sex couples. Noting the state's failure to show a single good reason for discriminating, the Court ruled in 1996 that it was unconstitutional for the Health Department to continue denying the freedom to marry to lesbian and gay couples. The judge, however, also stayed his decision to allow the state to appeal to the Hawaii Supreme Court. In 1998, anti-gay groups succeeded in passing a state constitutional amendment to grant the legislature a new power to "reserve marriage" to different-sex couples only. On December 9, 1999, the Hawaii Supreme Court decided that the case is now "moot" because of last year's change in the state constitution. The Court held that the 1998 constitutional amendment "[took] the statute out of the ambit of the equal protection clause of the Hawaii Constitution" at least as regards marriage licenses.

Brause & Dugan v. State (Alaska):
In March 1998, a state trial court judge ruled in a case brought by a male couple that has been together for over 20 years that the choice of a marital partner is fundamental and cannot be interfered with by the State without a compelling reason. The Court went on to add that being denied the right to marry because of your partner's sex is sex discrimination. The case never reached the point at which the state would have been required to set out its reasons for discrimination. Instead, in November 1998, the Alaska electorate approved a state constitutional amendment requiring that all marriages be "between one man and one woman." There may now be a new case claiming that the constitutional amendment violates other basic constitutional guarantees of equality and fairness.

The Defense of Marriage Act (DOMA):
The Federal Defense of Marriage Act, signed into law in 1996, is the most far-reaching anti-marriage law, but it only deals with the federal government. It defines marriages, for the purposes of federal laws and programs, as between one man and one woman, thereby excluding the lawful marriages of same-sex couples from the protection of at least 1049 federal laws, that encompass areas including taxes, inheritance, transfer of property, and burial rights. It also gives states the option of not recognizing lawful marriages licensed by other states, thereby setting up a situation in which people will be married in one state, but not the next.

The Limit on Marriages Ballot Initiative Measure (California):
On March 7th, 2000, California passed a ballot initiative measure stating, "Only marriage between a man and a woman is valid or recognized in California." Until passage of the measure, California recognized all marriages that were contracted legally in every other state of the union. The reason for that was quite simple: if each state decided to pick and choose which marriages it would accept, couples

THE VERMONT DECISION: CONTEXT AND IMPLICATIONS (CONTINUED)

would be married and unmarried as they drove across state lines. Until recently, states have concluded that this would be a ridiculous and harmful state of affairs. In recent years, many legislators have abandoned this policy in an effort to prevent recognition of marriage of same-sex couples within their states. California rejected attempts to block recognition of marriage of same-sex couples five times before passage of the Limit on Marriages Initiative.

How does the Vermont decision impact the rest of the country?

The Vermont decision presents a unique challenge to and opportunity for lawmakers around the country. When the Vermont Supreme Court conferred on same-sex couples the right to equal benefits, protections and responsibilities, it characterized this extension as "a recognition of our common humanity," calling into question the legitimacy of laws across the nation that deny civil equality to lesbian, gay, bisexual, and transgender people. It is likely that this landmark decision will put increased pressure on states around the country to re-evaluate their legal treatment of same-sex couples and same-sex headed families. Since *Baehr v. Anderson* brought into question the right of same-sex couples to marry in Hawaii in 1993, many states have passed legislation that would block recognition of the marriages of lesbian and gay couples performed legally in other states (when this becomes a reality). Currently 31 states have adopted anti-marriage measures and 3 more have measures pending. The bold, yet simple statement of the Vermont Justices has compelled many citizens to push for more inclusive marriage laws, and many others to fight for more restrictive ones. Many years of legislative battles lie ahead before any national consensus on this issue will be reached.

Is the United States the first country to afford marriage benefits and protections to same-sex couples?

No country in the world yet allows same-sex couples the freedom to marry, and none provides gay and lesbian people the full range of protections, responsibilities, and benefits that come with civil marriage. Within the last decade, several countries have moved to create a new marital status – registered partnership: Denmark (1989), Norway (1993), Greenland (1994), Sweden (1995), Iceland (1996), the Netherlands (1998), and France (1999). While short of full equality, registered partnership recognizes the marital nature of lesbian and gay committed relationships and offers most, but not all, of the benefits and protections of civil marriage. Generally, registered partnership differs from marriage in that: registered partnership is not marriage itself, and thus can be viewed as separate or unequal; registered partners cannot adopt non-related children, or even each other's children; registered partners cannot have an "official" church wedding in the country's established national church; one of the two registered partners must be a citizen of the country in which the partnership is contracted; and registered partnerships are not generally recognized outside of the country in which the partnership is contracted. Several other countries are considering similar legislation at the national level: Belgium, the Czech Republic, Finland, Germany, Luxembourg, Portugal, Spain, and Switzerland. At least one country, the Netherlands, is considering legislation that would open civil marriage equally to same-sex and different-sex couples. In 1995, the Scandinavian countries signed a treaty to honor each other's registered partnerships. Recognition throughout Europe and beyond will develop over time. Other countries provide some family recognition and protections at the national level, such as Australia, Canada, and Israel. In recent years, there have been several international legal victories in which courts have recognized the marital nature of committed gay and lesbian relationships, including, for example, in Canada, Colombia, Hungary, Israel, Namibia, and South Africa. In May 1999, the Canadian Supreme Court ruled 8-1 that where protections are provided to "spouses," they must be available to same-sex couples.

How will this decision affect marriages sanctioned or limited by religious groups?

The debate over the freedom to marry is about the right to enter into the state-created institution of civil marriage only. Civil and religious marriage are not the same thing. Many faiths already recognize marriages between same-sex couples, even though such unions are not recognized by the government. Individual congregations of Reform Jews, American Baptists, Buddhists, Episcopalians, Presbyterians, Unitarian Universalists, Methodists, the Society of Friends, and members of the United Church of Christ have performed marriages for same-sex couples. Even though the Vermont decision affords the benefits and protections of marriage to same-sex couples within the state of Vermont, local religious institutions retain their rights to decide for themselves whether to perform or recognize any marriage, just as they already do. No court decision can change the basic tenets of a religious faith. For example, some religions will not marry someone who has been divorced or two people of different faiths, although they may marry civilly.

Why do same-sex couples need or want to get married anyway?

Most same-sex couples already take on many of the same responsibilities as married couples, but have none of the legal protections or benefits that accompany civil marriage. In fact, despite taking responsibility for their partner's well being, both economically and emotionally, same-sex couples are legally treated as nothing more than roommates! As a result, one partner is often denied visitation and involvement when the other is in the hospital; couples are refused "family" health coverage, taxation, and inheritance rights; and are denied protection in case the relationship ends – sometimes even resulting in a partner's children being taken away. A short list of some of the over 1,000 rights and responsibilities associated with marriage includes:

- Spousal Support
- Medical Treatment
- Tax Benefits
- Funeral/Burial Rights
- Inheritance
- Immigration Rights
- Child Support
- Government Benefits
- Hospital Visitation
- Bereavement Leave
- Support Following Divorce

In addition, same-sex couples are denied the social and emotional security marriage provides for so many. Marriage was traditionally defined as a union of two

THE VERMONT DECISION: CONTEXT AND IMPLICATIONS (CONTINUED)

people of the same religion or the same race, or one in which wives were the property of their husbands. Those "traditional" elements of marriage changed to reflect the equality of individuals. Today, we recognize that the choice of a marriage partner belongs to each person, not to the state. Marriage is not always about procreation – many people marry who cannot or choose not to have children. Many lesbians and gay men do have children, but are denied the right to raise those children within a marital relationship. Marriage is best understood as a relationship of emotional and financial interdependence between two people in love who make a legal and public commitment to each other.

Gay & Lesbian Advocates & Defenders (GLAD) is a nonprofit, public interest legal organization whose mission is to achieve full equality and justice for New England's lesbian, gay, bisexual, and HIV or AIDS affected individuals. GLAD attorneys handle lawsuits involving sexual orientation discrimination as well as cases involving HIV or AIDS discrimination or invasion of privacy and confidentiality.

Lambda Legal Defense and Education Fund is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, and people with HIV/AIDS through impact litigation, education, and public policy work.

The Gay, Lesbian and Straight Education Network (GLSEN) is the largest national organization that brings together concerned citizens from all walks of life in order to end the destructive effects of anti-gay bias in schools across the country.

QUESTIONS FOR DISCUSSION/WRITING:

1. The Vermont State Legislature is charged with deciding whether same-sex couples should have access to full civil marriage or a *separate but equal* system of registered partnership. Which system do you feel would be most just? Can a separate system truly be equal? How should we apply understandings about *separate but equal* from the era of racial segregation to the question before the legislature today?

2. In both Hawaii and Alaska, the state constitution was amended to define marriage as the union between one man and one woman. Is there a justification for such a definition? Is such an amendment consistent with the spirit of the U.S. Bill of Rights? Should a state constitution be allowed to block marriage between two consenting adults based on gender, sexual orientation, or any other factor?

3. The Defense of Marriage Act denies same-sex couples access to federal protections and permits states to block recognition of marriage of same-sex couples performed legally in other states. Is DOMA constitutional? Should the federal government be permitted to legislate around marriage, an area traditionally controlled by state governments? Should individual states be allowed to deny recognition of marriages performed in other states, or should marriages legally performed in one state always be recognized in all other states?

4. What impact do you think the Vermont decision will have across the country? Do you anticipate a backlash of anti-gay marriage laws? An increase in the number of states that pass laws protecting families, including lesbian and gay families? Do you think the Vermont decision will increase acceptance of same-sex relationships amongst the American people, or will we see a rise in anti-gay sentiment and behavior?

APPENDIX 1

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Official Version Adopted by the United Nations General Assembly, December 10, 1948

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore, **the General Assembly** *proclaims* **this Universal Declaration of Human Rights** as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3. Everyone has the right to life, liberty and security of person.

Article 4. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6. Everyone has the right to recognition everywhere as a person before the law.

Article 7. All are equal before the law and are entitled without any discrimination to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by the law.

Article 9. No one shall be subjected to arbitrary arrest, detention or exile.

Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11. 1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense. 2. No one shall be held guilty of any penal offence, under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13. 1. Everyone has the right to freedom of movement and residence within the borders of each State. 2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14. 1. Everyone has the right to seek and to enjoy in other countries asylum from persecution. 2. This right may not be invoked in the case of prosecution genuinely arising from non-political crimes or from acts contrary to the purpose and principles of the United Nations.

Article 15. 1. Everyone has the right to a nationality. 2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

UNIVERSAL DECLARATION OF HUMAN RIGHTS (CONTINUED)

Article 16. 1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. 2. Marriage shall be entered into only with the free and full consent of the intending spouses. 3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17. 1. Everyone has the right to own property alone as well as in association with others. 2. No one shall be arbitrarily deprived of his property.

Article 18. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in a community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20. 1. Everyone has the right to freedom of peaceful assembly and association. 2. No one may be compelled to belong to an association.

Article 21. 1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. 2. Everyone has the right of equal access to public service in his country. 3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections, which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22. Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23. 1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. 2. Everyone, without any discrimination, has the right to equal pay for equal work. 3. Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. 4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24. Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25. 1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. 2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26. 1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on basis of merit. 2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. 3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27. 1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. 2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Articles 29. 1. Everyone has duties to the community in which alone the free and full development of his personality is possible. 2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. 3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

APPENDIX 2

THE STRUGGLE TO LEGALIZE SAME-SEX RELATIONSHIPS IN THE US, A BRIEF TIMELINE

1971 Baker v. Nelson in Minnesota, the first marriage of same-sex couples case brought in the United States, is ruled against plaintiffs Richard John Baker and James Michael McConnell.

1973 Controversial gay minister Rev. Ray Broshears marries three same-sex couples in San Francisco, generating much publicity in the process.

1974 Singer v. Hara. Plaintiffs John F. Singer and Barwick argued that Washington marriage statutes did not prohibit marriage of same-sex couples; therefore a license must be issued.

1975 The County Clerk of Boulder CO, Cela Rorex, issues Dave Zamora and Ave McCord a marriage license on advice of the state's DA. This causes a month-long rush on the clerk's office by same-sex couples seeking marriage licenses, until the state Attorney General voided the D.A.'s recommendation. All licenses were later revoked.

1975 In April, the Arizona Supreme Court deems recent gay marriage attempts unconstitutional, paving the way for the state legislature to pass an emergency bill defining marriage as possible only between a man and a woman.

1983 Karen Thompson's eight-year struggle for legal guardianship of her lover Sharon Kowalski, begins when a drunk driver collides with Sharon's vehicle, placing her in a coma for several months and leaving her quadriplegic and severely brain-damaged. Despite Sharon's wishes to be cared for by Karen, Sharon's parents refuse Karen full access or input into her care. Thompson becomes a key spokesperson for lesbian and gay couples' rights. Karen's case is won in 1991.

1984 Gay, lesbian and unmarried heterosexual couples can receive the same benefits as married couples in areas such as health care and bereavement leave in Berkeley, California, the first U.S. city to pass a domestic partners law for municipal employees.

1987 Approximately 2000 same-sex couples are 'married' in a mass wedding on the steps of the IRS in Washington, DC on October 10. The ceremony is part of the 1987 March on Washington activities dramatizing the tax benefits for married people that lesbian and gay couples are denied.

1989 A New York State court rules that a gay couple could be considered a family for purposes of rent controlled apartments.

1991 The Massachusetts Coalition for Lesbian and Gay Civil Rights launches a campaign to pass a gay marriage bill. The group finds a handful of Democratic co-sponsors.

1992 William Weld, governor of Massachusetts, signs an executive order granting lesbian and gay state workers the same bereavement and family leave rights as heterosexual workers.

1993 Baehr v. Lewin, a landmark marriage of same-sex couples case in Hawaii, rules that the state's refusal to issue marriage licenses to three same-sex couples presumptively violates Hawaii's Equal Rights Amendment (ERA) barring discrimination on the basis of sex (a "suspect class" due to the ERA).

1996 The DEFENSE OF MARRIAGE ACT was introduced in the House and Senate, and passed in late May. President Clinton signed the bill.

1997 Reverend Jimmy Creech of the United Methodist Church performs a same-gender covenant ceremony in defiance of Church doctrine and the instructions of his local Bishop.

1998 Hawaii passes a state constitutional amendment to grant the legislature a new power to "reserve marriage" to different-sex couples only.

1999 The Hawaii Supreme Court deems Baehr v. Lewin "moot" because of last year's change in the state constitution. The Court held that the 1998 constitutional amendment took the statute out of the ambit of the equal protection clause of the Hawaii Constitution.

1999 After performing a second covenant ceremony for a same-sex couple, United Methodist Reverend Jimmy Creech is stripped of his credentials.

1999 The Vermont State Supreme Court rules that the benefits and protections of marriage must be conferred on same-sex couples, making Vermont the first U.S. state to extend the legal/economic rights of marriage to gays and lesbians.

2000 The House Judiciary Committee of the Vermont State Legislature begins hearings to determine the system by which marriage rights will be delivered to same-sex couples in Vermont.

FURTHER INVESTIGATION: A BRIEF LIST OF RESOURCES

BOOKS & MANUALS

Baird, R.M. & Rosenbaum, S.E., *Same-Sex Marriage: The Moral and Legal Debate*, Prometheus Books (1997)
Boswell, John, *Same-Sex Unions in Premodern Europe*, Villard, New York, NY (1994)
Graff, EJ, *What is Marriage For? The Strange Social History of Our Most Intimate Institution*, Beacon Press (1999)
Strasser, Mark, *Legally Wed: Same-Sex Marriage and the Constitution*, Cornell University Press (1998)
National Gay and Lesbian Task Force, *To Have and To Hold: Organizing for Marriage*
Sullivan, A. & Landau, J., *Same-Sex Marriage: Pro and Con*, Vintage Books (1997)
Willhoite, Michael, *Daddy's Wedding*, Alyson Publishers (1996). [This is a book for children, ages 4-10]

VIDEOS

The Freedom to Marry: A Green Mountain View: This video features couples who speak about their lives and the meaning of being denied the freedom to marry. Produced by the Vermont Freedom to Marry Task Force, PO Box 1312 Middlebury, VT 05753.
The Right to Marry: Partners Task Force for Gay and Lesbian Couples: www.buddybuddy.com.
Evan Wolfson on *NIGHTLINE* and *FACE THE NATION*: The Director of Lambda's Marriage Project discusses the issues involved in equal marriage rights. www.lambdalegal.org.

ORGANIZATIONS AND WEB SITES

Children of Lesbians and Gays Everywhere: www.colage.org.
Family Pride Coalition: www.familypride.org
Gay & Lesbian Advocates & Defenders: www.glad.org
Lambda Legal Defense and Education Fund: www.lambdalegal.org
National Freedom to Marry Coalition: www.ftm.org
National Gay and Lesbian Task Force: www.ngltf.org
Partners Task Force for Gay and Lesbian Couples: www.buddybuddy.com
Student Alliance for Fairness and Equality (SAFE): www.fairandequal.com
Vermont Freedom to Marry Coalition: www.vtfreetomarry.org

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